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Briefing on How To Use the Federal Register—
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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: June 15; at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street, NW., Washington, DC
RESERVATIONS: 202–523–5240

Regulation Identifier Numbers (RINs)

Agencies have begun including a Regulation Identifier Number in the headings of their **Federal Register** documents. RINs also appear in entries listed in the *Unified Agenda of Federal Regulations,* which is published in the **Federal Register** in April and October of each year. Assigning RINs makes it easier for the public and agency managers to track the entries at the various stages of their development.

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206-AD49

Federal Employees Health Benefits; Medicare Eligible Individuals

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing regulations to implement the Medicare Catastrophic Coverage Act of 1988. The regulations define Medicare eligible individuals who are entitled to a reduced health insurance premium under the law.

EFFECTIVE DATE: June 26, 1989.

FOR FURTHER INFORMATION CONTACT: Margaret C. Randall, (202) 632-4634.

SUPPLEMENTARY INFORMATION: The Medicare Catastrophic Coverage Act of 1988, Pub. L. 100-360, was enacted on July 1, 1988. It expands benefits under Medicare Parts A and B effective January 1, 1989 and January 1, 1990, respectively. Some of the additional coverage provided under the new law duplicates coverage provided under the Federal Employees Health Benefits Program (FEHBP). In order to avoid having Federal annuitants pay premiums for overlapping coverage, Section 422 of the law provides for a reduction in FEHBP premium rates for Medicare eligible Federal annuitants. The amount of the reduced premium and the manner in which it is administered will be determined by the Office of Personnel Management.

On October 14, 1988, OPM published an interim regulation in the **Federal Register** (53 FR 40203) to define those individuals who will be eligible for the reduced premiums. OPM received one written response to the interim regulation from an association of Government employees. They suggested that OPM publish the procedures used to determine the rate reduction in order to ensure that the process is proper and timely. The law requires that OPM consult with the FEHBP carriers in determining the premium rate reduction. Otherwise, it does not address the methodology. In determining the 1989 rate reduction amount, OPM consulted with all the carriers and intends to continue in that vein each year. OPM does not believe that publishing the process would in any way add to its appropriateness or timeliness and would reduce our ability to respond quickly to changes in the FEHB and Medicare Programs.

The association also asked questions about the effective dates of the rate reductions and when the rate reduction amount would be published. Because the Act clearly states that the reduced rates shall apply as of the effective dates of the respective amendments to the Act, OPM sees no need to restate those effective dates in the regulations. The rate reductions are effective on the dates stated in the law regardless of when OPM publishes the amount of the reduction. OPM intends to publish the amount of each year's reduction in the **Federal Register** in advance of the FEHB Program open season. The 1989 rate reduction was published on October 26, 1988 (53 FR 43308).

The association questioned the use of language to define Medicare eligible individual in the regulation that is different from the language used in the Act. The regulation uses language which OPM believes is more commonly understood than the language in the law (for example, Medicare Part A instead of title XVIII of the Social Security Act). The terms "annuitant" and "former spouse" are undefined in the Act. As part of its normal function of clarification, the regulation refers to existing definitions of "annuitant" and "former spouse" established in Chapter 89 of Title 5, United States Code. The language used in the regulation is largely for administrative ease and in no way reduces the coverage of the Act.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regualtions will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees, annuitants, and former spouses.

List of Subjects in 5 CFR Part 890

Administrative practice and procedures, Government employees, Health insurance.

U.S. Office of Personnel Management.
Constance Horner,
Director.

PART 890—[AMENDED]

Accordingly, OPM is adopting its interim rule amending 5 CFR Part 890 published in the **Federal Register** (53 FR 40203, October 14, 1988) as a final rule without change.

[FR Doc. 89-12519 Filed 5-24-89; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 980

[FV-89-008]

Irish Potatoes Imported Into the United States; Final Rule Clarifying Exemption for Certified Seed

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule clarifies the exemption for certified seed potatoes in the potato import regulation. This action clarifies that such potatoes are exempt from the size, quality, and inspection requirements of the import regulation, when used for the purpose intended and are not sold in fresh market channels.

EFFECTIVE DATE: Final rule effective May 30, 1989.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone (202) 447-2020.

SUPPLEMENTARY INFORMATION: This rule amends 7 CFR Part 980 regulating Irish

potatoes imported into the United States. The potato import regulation is authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and import regulations issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 potato importers subject to the requirements of the potato import regulation. The Small Business Administration (13 CFR 121.2) has defined small agricultural producers as those having annual gross revenue for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of importers of potatoes may be classified as small entities.

Section 8e of the Act requires that when certain domestically produced commodities, including Irish potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating a commodity produced in different areas of the United States are concurrently in effect, the Secretary shall determine which of the areas produces the commodity in most direct competition with the imported commodity. Imports then must meet the quality standards set for that particular area.

In the case of potatoes, the current import regulation (§ 980.1, 37 FR 8059, April 25, 1972) specifies that import requirements for long types be based on those in effect for potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon (7 CFR Part 945) during each month of the year. The import requirements for round white types are based on those in effect for potatoes grown in the Southeastern States from June 5 to July 31 (7 CFR Part 953), and on those in effect for potatoes grown in Colorado Area 3 for the remainder of the year (7 CFR Part 948). The import requirements for round red types are based on those in effect for potatoes grown in Washington during the months of July and August (7 CFR Part 946), and on those in effect for potatoes grown in Colorado Area 2 for the remainder of the year (7 CFR Part 948).

The handling requirements established under the marketing orders are intended to provide that potatoes shipped to the fresh market meet standards of acceptable size and quality for that market. Exemptions are provided for potatoes used in certain other outlets to recognize that there are situations in which it is unnecessary or unreasonable to require potatoes to meet fresh market requirements. To the extent practicable, comparable exemptions are provided in the import regulation.

Under each marketing order regulation, an exemption is provided for potatoes used as seed because the requirements for this outlet differ markedly from those for the fresh market. Seed potatoes are grown and handled under special conditions to ensure that they possess the necessary attributes for seed, such as being free from disease. Each major potato producing State operates a seed certification program under which requirements for seed potatoes are established. If these requirements are met, seed potatoes are certified and identified as such by the State's certifying agency. Marketing order exemptions for seed potatoes specify that in order to qualify for the exemption, potatoes must be officially certified as seed. Further, the potatoes must actually be used as seed.

The import regulation also exempts potatoes that are officially certified as seed. However, it does not specify that these potatoes must be utilized as seed to qualify for the exemption. To clarify this provision, the import regulation is being revised to expressly state that the exemption for certified seed potatoes applies only to potatoes which meet the requirements for such potatoes and are used for such purpose. This revision makes the import regulation's exemption provision comparable to domestic regulations.

In addition, all potatoes imported into the United States are currently grown in Canada, which operates a seed certification program similar to those existing in the United States. The current import regulation incorrectly identifies the official Canadian seed certifying agency. Accordingly, a revision is being made in the regulation to correctly identify that agency as the Plant Health Directorate, Food Production and Inspection Branch, Agriculture Canada.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Notice of this action was given in the February 24, 1989, **Federal Register** (54 FR 7936) providing interested persons until March 27, 1989, to file written comments.

One comment was submitted by Dr. Richard T. Zink on behalf of the Minnesota Certified Seed Potato Growers Association. Dr. Zink expressed opposition to this action, stating that seed potatoes should continue to be subject to the import regulation. He indicated that lifting the grade, size, and inspection requirements for seed potato imports would be detrimental to the domestic potato industry, because it would result in a serious disease threat. Further, potatoes imported as seed are not necessarily used for that purpose and, in fact, are often sold in fresh market channels.

Imports of seed potatoes are currently exempt from the fresh market standards imposed by the import regulation in question, and the notice did not propose eliminating the current exemption. While seed potatoes would continue to be exempt from the grade, size, and maturity requirements of the import regulation, they would still be required to be inspected and certified by Agriculture Canada. As in this country, the seed certification program in Canada has as its main objective assuring that seed potatoes are free from disease. The clarification in the import regulation exemption for seed potatoes contained in this final rule would have no effect on Canada's certification requirements, and therefore should not subject domestic growers to any additional disease risks. Accordingly, this aspect of the comment is denied.

Dr. Zink's comment with respect to potatoes imported as seed being sold on the fresh market lends support to this action. As previously indicated, the exemption provision of the import regulation does not expressly state that imported seed potatoes must be used for that purpose. Adding such a statement would clarify the intent of the exemption, and should prevent seed potatoes being sold on the fresh market. Since the exempt seed potatoes would

be required to be tagged, they would be readily identifiable in wholesale markets. Therefore, it is believed that this action would adequately assist in assuring that exempt potatoes are not sold in the commercial fresh market channels contrary to the intent of the potato import regulation.

After consideration of all relevant information, including the proposal set forth in the notice and the comment filed with respect thereto, it is found that the rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

It is hereby further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553) in that (1) This action clarifies an existing exemption and does not impose additional regulatory requirements on potato imports; and (2) importation of 1988–89 season potatoes is continuing and this revision should be made as soon as possible to clarify the intent of the exemption.

List of Subjects in 7 CFR Part 980

Marketing agreements and orders, Imports, Potatoes.

For the reasons set forth in the preamble, 7 CFR Part 980 is amended as follows:

PART 980—VEGETABLES; IMPORT REGULATIONS; POTATOES

1. The authority citation for 7 CFR Part 980 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 980.1 is amended by revising paragraph (e) to read as follows:

Note: This section will appear in the Code of Federal Regulations.

§ 980.1 Import regulations; Irish potatoes.

* * * * *

(e) *Certified seed.* Certified seed potatoes shall include only those potatoes which are officially certified and tagged as seed potatoes by the Plant Health Directorate, Food Production and Inspection Branch, Agriculture Canada, and which are subsequently used as seed.

* * * * *

Dated: May 19, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–12491 Filed 5–24–89; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 998

[Docket No. FV–89–041]

Marketing Agreement 146 Regulating the Quality of Domestically Produced Peanuts; Expenses, Assessment Rate, and Indemnification Reserve for the Peanut Administrative Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures for administration and indemnification, establishes an assessment rate, and authorizes the continuation of an indemnification reserve under Marketing Agreement 146 for the 1989–90 crop year. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: July 1, 1989 through June 30, 1990 (§ 998.402).

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2530–S, Washington, DC 20090–6456, telephone 202–475–3862.

SUPPLEMENTARY INFORMATION:

This final rule is issued under Marketing Agreement 146 (7 CFR Part 998) regulating the quality of domestically produced peanuts. This agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subjects to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 68 handlers of peanuts covered under the peanut marketing agreement, and approximately 46,950 producers in the 16 states covered under the agreement. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. Some of the handlers covered under the agreement are small entities, and a majority of producers may be classified as small entities.

Under the marketing agreement, the assessment rate for a particular crop year applies to all assessable tonnage handled from the beginning of such year (i.e., July 1). An annual budget of expenses is prepard by the Peanut Administrative Committee (Committee) and submitted to the Department of Agriculture for approval. The members of the Committee are handlers and producers of peanuts. They are familiar with the Committee's needs and with the costs for goods, services and personnel for program operations and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed at industry-wide public meetings. Thus, all directly affected persons have an opportunity to participate and provide input. The handlers of peanuts who will be directly affected have signed the marketing agreement authorizing approval of expenses that may be incurred and the imposition of assessments.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected receipts and acquisitions of farmers' stock peanuts. It automatically applies to all assessable peanuts received by handlers from July 1, 1989. Because that rate is applied to actual receipts and acquisitions, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget, rate of assessment, and the continuation of an indemnification reserve were acted upon by the Committee on March 28–29, 1989, and expenses are incurred on a continuous basis. Therefore, this budget and assessment rate approval must be expedited so that the Committee will have funds to pay its expenses starting on July 1, 1989.

Notice of this action was published in the Federal Register on April 28, 1989 (54 FR 18297). The comment period ended May 9, 1989. No comments were received.

The Committee unanimously recommended a 1989–90 budget of administrative expenses of $850,000 or $34,000 more than budgeted last year. Budget items for 1989–90 which have increased compared to those from 1988–89 (in parentheses) are: Executive salaries, $119,521 ($114,374); field representative salaries, $225,500 ($218,000); clerical salaries, $136,000 ($120,000); employee benefits, $89,000 ($77,000); and office rent and parking, $45,700 ($43,000). All other items are

budgeted at about last year's amounts except for staff travel expenses which have been decreased from $11,000 to $5,000. The administrative budget includes a reserve for contingencies amounting to $5,279.

The recommended administrative assessment rate for the 1989–90 crop year is $0.50 per ton of assessable peanuts. Last year the assessment rate was $2.48 per ton ($0.48 for administrative expenses and $2.00 for indemnification expenses). The 1989–90 assessable tonnage was estimated at 1.7 million tons, the same as last year. Application of the assessment rate to this estimate will result in $850,000 for administrative expenses.

Approximately $8.4 million will be carried forward into the 1989–90 crop year as a reserve under the agreement to meet 1989–90 indemnification expenses. This reserve is deemed adequate to cover indemnification expenses for the 1989–90 crop year. Therefore, the Committee did not recommend an assessment to make monetary additions to the indemnification reserve. The reserve is well within the limits authorized by the agreement. Funding for the indemnification account will also be generated from interest on time deposits.

While this action may impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers signatory to the agreement. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing agreement.

Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendations submitted by the Committee, it is found that this final rule will tend to effectuate the declared policy of the Act.

This final rule should be expedited because the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. Therefore, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 998

Marketing agreement, Peanuts.

For the reasons set forth in the preamble, 7 CFR Part 998 is amended as follows:

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR Part 998 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 998.402 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 998.402 Expenses, assessment rate, and indemnification reserve.

(a) *Administrative expenses.* The budget of expenses for the Peanut Administrative Committee for the crop year beginning July 1, 1989, shall be in the amount of $850,000, such amount being reasonable and likely to be incurred for the maintenance and functioning of the Committee and for such purposes as the Secretary may, pursuant to the provisions of the marketing agreement, determine to be appropriate.

(b) *Indemnification expenses.* Expenses of the Committee for indemnification payments, pursuant to the terms and conditions of indemnification applicable to the 1989 crop, effective July 1, 1989, are not expected to exceed the balance of the indemnification reserve (approximately $8.4 million), such amount being reasonable and likely to be incurred.

(c) *Rate of assessment.* Each handler shall pay to the Committee, in accordance with § 998.48 of the marketing agreement, an assessment at the rate of $0.50 per net ton of farmers' stock peanuts received or acquired other than from those described in § 998.31 (c) and (d). All funds generated from this assessment shall be for administrative expenses.

(d) *Indemnification reserve.* Monetary additions to the indemnification reserve, established in the 1965 crop year pursuant to § 998.48 of the agreement, shall continue. That portion of the total assessment funds accrued from previous crop years and not expended in providing indemnification on the 1989 crop peanuts shall be kept in such reserve and shall be available to pay indemnification expenses on subsequent crops.

Dated: May 19, 1989.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–12492 Filed 5–24–89; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 61

RIN 3150–AB89

Disposal of Radioactive Wastes

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The NRC is amending its regulations to require disposal of greater-than-Class-C (GTCC) low-level radioactive wastes in a deep geologic repository unless disposal elsewhere has been approved by the Commission. The amendments are necessary to ensure that GTCC wastes are disposed of in a manner that would protect the public health and safety and therefore obviate the need for altering existing classifications of radioactive wastes as high-level or low-level.

EFFECTIVE DATE: The rule will become effective on June 26, 1989.

FOR FURTHER INFORMATION CONTACT: W. Clark Prichard, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3884.

SUPPLEMENTARY INFORMATION:

Background

On May 18, 1988, the Nuclear Regulatory Commission published in the **Federal Register** (53 FR 17709) proposed amendments to Part 61 to require geologic repository disposal of greater-than-Class-C (GTCC) low level radioactive waste (LLW) unless an alternative means of disposal was approved by the Commission. The proposed amendments requiring geologic repository disposal, or an approved alternative, were aimed at insuring that GTCC waste would be disposed of in a manner consistent with the protection of public health and safety. This action was taken in lieu of a revision of the definition of high level radioactive waste (HLW). In proposing the amendments, the Commission outlined its rationale for not proceeding with a revision of the definition of HLW along the lines proposed in the advance notice of proposed rulemaking (ANPRM) published in February 27, 1987 (51 FR 5992).

It is the Commission's view that intermediate disposal facilities may never be available. In this event, a repository would be the only type of facility generally capable of providing safe disposal for GTCC wastes. At the

same time, the Commission wishes to avoid foreclosing possible use of intermediate disposal facilities by the Department of Energy (DOE). If DOE chooses to develop one or more intermediate disposal facilities, the Commission anticipates that the acceptability of the facilities would be evaluated in the light of the particular circumstances, considering for example the existing performance objectives of 10 CFR Part 61 and any generally applicable environmental radiation protection standards that might have been established by the U.S. Environmental Protection Agency. Technical criteria to implement the performance objectives and environmental standards would be developed by the Commission after DOE had selected a specific disposal technology and decided to pursue development of an intermediate facility.

The Commission considers that the Part 61 amendments would obviate any need to reclassify certain GTCC wastes as HLW. Many comments on the ANPRM advocated classification of all GTCC wastes as HLW in order to ensure availability of a safe disposal "home" for those wastes. These amendments achieve the same purpose while leaving open the prospect that an intermediate disposal facility may prove attractive at some time in the future.

Office of Technology Assessment Report

Following publication of the proposed amendments, the Congressional Office of Technology Assessment published a report on management of GTCC LLW.[1] Its recommendations on disposal of GTCC waste generally support the stance taken by the Commission in the proposed amendments.

The OTA report states that "If a decision about the disposal of GTCC wastes were required today, a conservative approach would be to permanently isolate the waste in a deep geologic repository, as has been proposed for commercial spent fuel and defense HLW." [2] The report goes on to acknowledge that further research and development could demonstrate the acceptability of intermediate disposal methods, such as deep-augured holes or an intermediate-depth repository.

The Commission emphasizes that these amendments preserve DOE's flexibility to pursue either one of these alternatives. The OTA report agrees with the Commission that the volume of GTCC waste is probably not great enough to justify a separate facility for this waste; costs of geologic repository disposal of GTCC waste would be comparable to, or lower than, developing a special disposal facility solely for GTCC waste.

The overall recommendations of the OTA report are that a Federal off-site interim storage facility for GTCC waste be established, as no permanent disposal facility could be available for at least 15 to 20 years. Until these interim storage facilities become operational, the Federal government could provide limited access to an existing DOE storage facility. Within the next year or so, DOE should begin to evaluate the impacts on repository operations and performance of emplacing GTCC waste in the repository. If DOE determines that such impacts are unacceptable, it could then begin to develop an alternative disposal facility.

Public Comments

The Commission received 35 comment letters in response to its request for public comment. Among the responses were comments from the Department of Enegy (DOE), the Environmental Protection Agency (EPA), the States of Indiana, New York, Pennsylvania, South Carolina, Vermont, Michigan, Washington, Tennessee, and the Midwest Interstate Low Level Radioactive Waste Commission. Remaining comments came from industry, professional, and environmental groups, as well as private citizens. The following is a summary of major comments and Commission responses. A detailed analysis of public comments is available at the Commission's Public Document Room, 2120 L Street NW., Washington, DC.

(a) Restricting Alternatives

Many comments, including some by States and a regional state LLW compact, argued for restricting the alternatives to geologic repository disposal. These comments were concerned that GTCC waste would be disposed of in State or State compact operated facilities. NRC was urged to "eliminate the option" of disposal in State or State compact facilities, by limiting alternative disposal methods to Federal facilities.

This concern must be examined in the light of the Low Level Radioactive Waste Policy Amendments Act of 1985, Pub. L. 99–240, 42 U.S.C. 2021b *et seq.* (LLWPAA) which clarified Federal and State responsibilities for radioactive waste disposal. States are responsible only for commercial LLW defined as "A", "B", or "C" waste by Part 61. All HLW, and all GTCC LLW is a Federal responsibility. The concerns expressed by commenters on this point have therefore been addressed, to a large extent, by legislation. No health and safety concerns have been presented that would persuade the Commission to require the use of Federal facilities, to the exclusion of other facilities licensed under the Atomic Energy Act, for the disposal of all GTCC. Indeed, the LLWPAA appears to recognize the continued authority of a State, subject to the provisions of its compact, or a compact region, to accept GTCC waste for disposal, and in the absence of some compelling reason the Commission's judgment is that this option should be preserved.

(b) Applicability of Standards

Both EPA and DOE, among other commenters, were concerned about one aspect of possible geologic repository disposal of GTCC waste. Should GTCC LLW be emplaced in a repository along with HLW, these two categories of waste would be subject to different standards—EPA's HLW standard, and EPA's LLW standard. In addition, they questioned whether NRC's 10 CFR Part 60, or 10 CFR Part 61 would apply to GTCC waste in a repository. Commenters cited the potential for confusion in having dual standards apply to waste in the same repository.

The Commission notes that its regulations were developed for specific types of disposal facilities. Thus, Part 60 applies to any geologic repository for HLW, regardless of what other types of radioactive wastes may be disposed of there. Similarly, Part 61 pertains to land disposal facilities other than repositories. Therefore, only Part 60, and not Part 61, would be relevant for disposal of GTCC wastes in a HLW repository.

If GTCC wastes were to be disposed of in a deep geologic repository, questions might be raised regarding the applicability to those wastes of the waste form and packaging requirements of Part 60. As Part 60 is now structured, the retrievability requirement of § 60.111 and the implicit requirement for packaging to permit safe handling and emplacement apply to all wastes, including GTCC wastes, that are disposed of in a repository. Applicability of the waste package containment requirement (300–1,000 years) is specifically limited to packages containing HLW or spent nuclear fuel. Because GTCC wastes would not be classified as HLW under these

[1] U.S. Congress, Office of Technology Assessment, *An Evaluation of Options for Managing Greater than Class C Low Level Radioactive Waste*, OTA–BP–0–50, October, 1988.

[2] ibid. pp. 2–3.

amendments, the waste package requirements of Part 60 would not pertain to GTCC wastes. The performance objectives for the engineered barrier system (release rate of 1 part per 100,000 per year) and for overall system performance are stated so as to be applicable to all wastes emplaced in a repository. The degree to which these performance objectives would affect GTCC waste form and packaging would depend on the specific radionuclides present in the GTCC wastes and on the physical and chemical forms of those wastes.

For all wastes disposed of in a repository, Part 60 now requires:

(1) waste disposal operations shall be conducted in compliance with the radiation protection requirements of Part 20 of the NRC's regulations (§ 60.111(a)),

(2) the option of waste retrieval shall be maintained for a period up to 50 years after the start of waste emplacement operations (§ 60.111(b)), and

(3) "* * * any release of radionuclides from the engineered barrier system shall be a gradual process which results in small fractional releases to the geologic setting over long times * * * The release rate of any radionuclide from the engineered barrier system following the containment period shall not exceed one part in 100,000 per year of the inventory of that radionuclide calculated to be present at 1,000 years following permanent closure * * *" (§ 60.113).

Also implicit in Part 60 is a requirement that any GTCC wastes disposed of in a repository not prevent HLW or spent fuel from meeting the specific performance objectives for those types of wastes.

These general objectives can be achieved in various ways for different wastes. For example, containment within a durable waste canister might be appropriate for short-lived wastes (half-lives about 30 years or less), while processing of wastes to reduce leachability or use of retardant backfill materials might be more appropriate for longer-lived wastes. The NRC is initiating an effort, as contemplated by § 60.135(d) of Part 60, to specify in more detail the waste form and packaging criteria appropriate for specific types of GTCC wastes. The Commission anticipates that DOE will develop specific waste form and packaging alternatives for consideration by the NRC in that rulemaking, and the Commission would welcome similar suggestions from other interested parties.

Previous development of EPA's standards has addressed types of wastes rather than types of disposal facilities as in NRC's regulations. Thus, it is possible that a repository containing both HLW and GTCC LLW would be subject to two EPA standards. The NRC does not anticipate that this will cause significant problems for DOE, since the LLW standard has not yet been proposed and this situation can be taken into account as the standard is developed.

(c) Effects on Repository Program

There were a number of comments, including those of DOE, that expressed concern over the possible impacts on the geologic repository program of emplacement of GTCC waste along with HLW in the repository. Specific concerns were over the potential for additional costs, GTCC waste taking up valuable repository space, and the burden for DOE of having to include GTCC waste in its performance assessment of the repository.

In the Commission's view, these concerns do not warrant changes from the proposed amendments. First, the proposed amendments allow for a range of GTCC disposal methods to be used by DOE. Under present regulations on land disposal of LLW (10 CFR Part 61), GTCC waste is specifically identified as "not generally acceptable" for near-surface disposal. Disposal methods for GTCC waste must generally be "more stringent" than near-surface disposal. The proposed amendments to Part 61 specified that one "more stringent" method would be geologic repository disposal. Other methods are not specified but are also left open to DOE, subject to Commission approval. The proposed amendments were not what prevented DOE from routinely using near-surface disposal; that is already prohibited by 10 CFR Part 61. Thus, relevant cost impacts of the amendments do not involve a comparison between costs of geologic repository disposal versus costs of near-surface disposal. Cost comparisons involve geologic repository disposal versus other unspecified Commission-approved "intermediate" methods. However, the proposed amendments did not require one method to be selected over another; either option is permitted. DOE would presumably weigh cost comparisons along with other factors in selecting which disposal method to use.

Even if geologic repository disposal were selected, this type of disposal should not cause an increase in the present HLW fee charged nuclear utilities—a specific concern raised on behalf of industry. Rather, as suggested by DOE's study of the matter pursuant to section 3(b)(3) of the LLWPAA, it is likely that a separate fund, similar to the HLW Nuclear Waste Fund, would be established to provide for payment of disposal costs by the generators of GTCC wastes, either as an advance fee or as a charge upon waste receipt (*Recommendations for Management of Greater-than-Class C Low Level Radioactive Waste*, U.S. Department of Energy, DOE/NE-0077, 1987). The Commission anticipates that new legislation would be enacted if required so that the current situation does not represent a major impediment to disposal of GTCC wastes.

The fact that the expected volume of GTCC waste is very low was an important factor in the Commission's decision to propose the Part 61 amendments. Current evidence shows that the expected volume of GTCC waste is very small relative to volumes of HLW and Class A, B, and C LLW. It is projected that 2,000–4,800 cubic meters of commercially-generated GTCC waste will need disposal through the year 2020 [3]. This amount of waste is smaller than the anticipated excavated volume of a single emplacement room of a repository, and would not present a significant burden on the capacity of the repository to receive HLW. It would not be a significant factor underlying the need for a second repository.

Regarding DOE's assessment of the performance of the repository, if DOE found that it did pose a major obstacle, these amendments would permit DOE to choose an acceptable alternative disposal method.

(d) Relationship to Defense Wastes

Some comments were concerned with any effects this rulemaking would have on defense wastes.

The proposed amendments apply solely to commercial GTCC LLW, and have no bearing on facilities for defense LLW. NRC has licensing authority only over commercially generated LLW; it has no licensing authority over defense LLW, including defense LLW that might be analogous to GTCC waste. Because Part 61, by its terms, would only apply to DOE activities subject to NRC jurisdiction, and NRC jurisdiction is lacking for defense LLW facilities, these efforts would have no effect on defense LLW disposal.

In the case of facilities authorized for the disposal of HLW, the Commission does have jurisdiction and the Commission's regulations would continue to apply. Accordingly, to the extent that DOE disposes of HLW in facilities other than geologic

[3] U.S. Department of Energy estimates.

repositories, a license under Part 61 would be required as before. DOE would not necessarily be precluded from proceeding with such disposal, but as has always been the case DOE would need to obtain the Commission's approval. The NRC staff has been working with DOE to develop appropriate classifications for defense reprocessing wastes under existing laws and regulations. These efforts have led to agreement that certain decontaminated salts at Savannah River and West Valley, generated incidentally in the course of processing, should not be classified as HLW. Additional efforts are now underway to review materials to be produced at Hanford in projected operations, to determine whether the disposal thereof is subject to Commission licensing.

(e) Restricting DOE Options for GTCC Management

DOE argued that the proposed amendments would limit its statutory authority, under the LLWPAA, to develop a comprehensive policy for management of GTCC waste.

The Commission considered the proposed rule to be entirely consistent with the "comprehensive scheme for developing a policy for disposal of GTCC wastes" referred to in this comment. The proposed rule did not constrain DOE's ability to "identify disposal options, financing mechanisms, and the legislation needed to implement them." Nor did the proposed rule require disposal of GTCC wastes prior to submittal of DOE's recommendations to Congress. The proposed rule only recognized that GTCC wastes must be disposed of in a facility licensed by the NRC—a constraint imposed by the LLWPAA

In DOE's 1987 report to Congress regarding management of GTCC wastes (DOE/NE–0077), DOE stated that certain regulatory actions were needed before DOE could proceed with identification of disposal options and costs. One of these actions was a decision by NRC whether or not to proceed with development of a concentration based definition of high-level waste. The Commission has decided not to develop such a definition for the reasons previously discussed. Thus, one of the regulatory impediments previously identified by DOE will be removed by this rulemaking.

(f) Reference to Analyses of Kocher and Croff

In the proposed rule, the Commission cited a technical report which had recently been published (Kocher, D.C. and A.G. Croff, *A Proposed Classification System for High-Level and Other Radioactive Wastes*, ORNL/TM–10289, Oak Ridge National Laboratory, 1987). The Commission cited this report to support its view that evaluations of the waste isolation capabilities of "intermediate" disposal facilities would be so speculative and site-specific that such analyses would not provide a technically defensible basis for classifying wastes as HLW or non-HLW. The Commission further stated that it could not accept an alternative classification approach presented in that report because that approach was based solely on the short-term storage and handling risks associated with the heat and external radiation levels generated by a waste rather than on the degree of waste isolation required following disposal. The authors of the cited report (Kocher and Croff) commented on the proposed rule alleging that the Commission had misrepresented the content and conclusions of their report.

As discussed in the detailed analysis of public comments, the Commission acknowledges that its statements could have been misunderstood. The Commission's purpose in referring to Kocher and Croff's report was solely to support its view that the proposal presented in the ANPRM, i.e., classification of wastes based on analyses of the projected performance of "intermediate" disposal facilities, should not be pursued because of the limited development of these facilities and because their performance is likely to be highly site-specific. The Commission continues to believe that Kocher and Croff's report supports this view. Other references to Kocher and Croff's work are withdrawn.

(g) Licensing Under Part 61

Concerning alternatives to geologic repository disposal, some comments argued that the licensing of any alternative disposal method should not necessarily be under the framework of Part 61, as was proposed in § 61.55. This would be too restrictive in their view.

The Commission's regulations for licensing of radioactive waste disposal consist solely of 10 CFR Part 60, which applies to disposal in a geologic repository, and 10 CFR Part 61, which applies to land disposal other than in a geologic repository. A wide variety of disposal methods, including all of those currently proposed as "intermediate" disposal methods, could be licensed under Part 61. Thus, the Commission does not believe that § 61.55 places any unnecessary restrictions on DOE.

On the contrary, as provided in § 61.1, Part 61 establishes procedures, criteria, and terms and conditions with respect to "land disposal of radioactive waste". In implementing this objective, § 61.3 requires that the disposal of low-level waste at any "land disposal facility" must be authorized udner Part 61. Section 61.7 notes that additional technical criteria might be needed for licensing of disposal facilities other than "near-surface" disposal. If needed, such criteria would be added to Part 61 before licensing an "intermediate" disposal facility. Because "land disposal facility" is defined broadly (so as to include any facility other than a geologic repository), the reference to licensing under Part 61 is proper and in conformance with the existing regulatory structure.

(h) Mixed GTCC Waste

EPA raised the possibility that some GTCC wastes would also contain hazardous materials subject to RCRA (Resource Conservation and Recovery Act) regulations. The Commission acknowledges this possibility as well as the importance of steps to insure that "mixed" GTCC wastes are managed appropriately. DOE will need to consider applicable RCRA requirements as well as those arising under the Atomic Energy Act. Should RCRA requirements associated with GTCC waste represent a significant impediment to placing a geologic repository in service, DOE will still have the option to propose the use of a separate facility.

(i) Limiting State Responsibility

A number of comments wanted the Commission to promulgate regulations making all radioactive waste which is hazardous for over 100 years a Federal responsibility. Congress clarified Federal/State responsibilities for radioactive waste in the LLWPAA. States are responsible for all commercially-generated Class A, B, and C LLW. The Federal government is responsible for the disposal of HLW and defense LLW. In view of this statutory framework, which the Commission considers to be compatible with protection of public health and safety, there would be no basis for any Commission action at this time.

Changes From the Proposed Rule

Only one change from the proposed rule has been made in these final amendments. Proposed § 61.55(a)(2)(iv) required geologic repository disposal of GTCC waste "unless proposals for disposal of such waste in a disposal site licensed pursuant to this part are submitted to the Commission for

approval." A comment pointed out that the mere submittal of proposals was quite different than approval of proposals by the Commission. The Commission agrees that its intent is better expressed by requiring proposals to be approved. Accordingly, the wording in this section has been changed to read "proposals * * * are approved by the Commission."

Final Rule

Following its review and analysis of the public comments, the Commission believes that the course of action it had proposed—requiring geologic repository disposal of GTCC waste, or approved alternative—should be adopted. Therefore, these final amendments to Part 61 deviate little from those proposed. By these amendments, the Commission is providing DOE with the regulatory framework DOE needs to proceed with plans for management of GTCC waste. The rule identifies one approved method of disposal for GTCC waste, but allows DOE to plan and develop an alternative method if DOE so desires, subject to Commission approval. It is now up to DOE to evaluate its options for GTCC waste disposal, and to proceed with GTCC disposal.

In line with the foregoing discussion, therefore, the Commission is promulgating two changes to its existing rules. First, by amending 10 CFR 61.55, it would henceforth require all greater-than-Class-C waste to be disposed of in a geologic repository unless an alternative proposal is approved by the Commission. Second, the jurisdictional reach of 10 CFR Part 61 would be extended to cover all activities of the Department of Energy that may be subject to the licensing and regulatory authority of the Commission. This is intended to reflect the policy of the Low-Level Radioactive Waste Policy Amendments Act, which provides that all commercially-generated waste with concentrations exceeding Class C limits shall be disposed of in a facility licensed by the Commission that the Commission determines is adequate to protect the public health and safety. This change would take the form of eliminating the more restrictive language regarding the Department of Energy that appears in § 61.2.

Environmental Impact: Categorical Exclusion

The amendments to Part 61 contained herein are corrective or of a minor nature and do not substantially modify existing regulations. Accordingly, under 10 CFR 51.22(a) and 51.22(c)(2), they are eligible for categorical exclusion from the preparation of an environmental assessment.

The first change, pertaining to the definition of "person," is corrective in that it merely reflects the broader jurisdiction of the Commission under the Low-Level Radioactive Waste Policy Amendments Act. The modification is not substantial.

The second change, pertaining to the disposal of greater-than-Class-C radioactive wastes in a geologic repository, is minor. The existing regulations in 10 CFR Part 61 already preclude disposal of GTCC in a Part 61 licensed disposal facility without further review and approval. This amendment does no more than state the Commission's conclusion that, in the absence of such an approved alternative, a geologic repository is the only currently authorized facility acceptable for GTCC disposal without further review by the Commission. It is thus a minor change to specify that the "more stringent" methods are to include disposal in a repository, where it is also expressly provided that, as before, proposals for other methods of disposal may still be submitted to the Commission for approval. No substantial modification of existing regulations is involved.

Paperwork Reduction Act Statement

This rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget approval number 3150–0135.

Regulatory Analysis

The Commission has prepared a regulatory analysis for this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW., Washington, DC. Single copies of the analysis may be obtained from W. Clark Prichard, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3884.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), and NRC Size Standards (December 9, 1985, 50 FR 50241), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. The only entity subject to regulation under this rule would be the U.S. Department of Energy, which does not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act. All waste generators, some of which might be classified as small entities, must pay the costs associated with management and disposal of the wastes they generate. This rule would not affect those costs since it preserves all options currently available for waste disposal. Only DOE's selection of a specific disposal technology from the full range of alternatives available would potentially have an economic impact on small entities.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule, and therefore, that a backfit analysis is not required for this final rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 61

Low-level waste, Nuclear materials, Penalty, Radioactive waste, Reporting and recordkeeping requirements, Waste classification, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Part 61.

PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

1. The authority citation for Part 61 continues to read as follows:

Authority: Secs. 53, 57, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246, (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 94 Stat. 2951 (42 U.S.C. 2021a and 5851).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); Tables 1 and 2, §§ 61.3, 61.24, 61.25, 61.27(a) 61.41 through 61.43, 61.52, 61.53, 61.55, 61.56, and 61.61 through 61.63 are issued under sec. 161b, 68 Stat. 948 as amended (42 U.S.C. 2201(b)); §§ 61.9a, 61.10 through 61.16, 61.24, and 61.80 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 61.2, the definition of "person" is revised in the alphabetical sequence to read as follows:

§ 61.2 Definitions.

As used in this part:

* * * * *

"Person" means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department of Energy (except that the Department of Energy is considered a person within the meaning of the regulations in this part to the extent that its facilities and activities are subject to the licensing and related regulatory authority of the Commission pursuant to law), any State or any political subdivision of or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

* * * * *

3. In § 61.55, paragraph (a) is amended by revising paragraph (a)(2)(iv) to read as follows:

§ 61.55 Waste classification.

(a) * * *

(2) * * *

(iv) Waste that is not generally acceptable for near-surface disposal is waste for which form and disposal methods must be different, and in general more stringent, than those specified for Class C waste. In the absense of specific requirements in this part, such waste must be disposed of in a geologic repository as defined in Part 60 of this chapter unless proposals for disposal of such waste in a disposal site licensed pursuant to this part are approved by the Commission.

* * * * *

Dated at Rockville, Md. this 19th day of May, 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89-12570 Filed 5-24-89; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-187-AD; Amdt. 39-6225]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which requires installation of a placard, inspection of the aft right lavatory partition beam to ensure structural integrity, and repair, if necessary. This amendment is prompted by reports of an inadvertent saw cut made in an aft right lavatory partition beam during the production installation of a ceiling panel. This condition, if not corrected, could lead to failure of the partition beam to provide adequate strength for the lavatory-mounted occupied flight attendant seat when subjected to flight or emergency landing conditions.

EFFECTIVE DATE: June 29, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Pliny Brestel, Airframe Branch, ANM-120S; telephone (206) 431-1931. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires the installation of a placard, inspection of the aft right lavatory partition beam to ensure structural integrity, and repair, if necessary, was published in the **Federal Register** on January 13, 1989 (54 FR 1385).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association (ATA) of America requested that the proposed reporting requirements of paragraph C. be deleted from the rule and that reporting should only be required when further rulemaking might be necessary. The FAA does not concur. When the unsafe condition addressed by AD action appears to be attributed to a manufacturer's quality control (QC) problem, such a reporting requirement is instrumental in ensuring that the FAA is able to gather as much information as possible as to the extent and nature of the QC problem or QC breakdown, especially in cases where this information may not be available through other established means. This information is necessary to ensure that proper corrective action is implemented.

The ATA further commented that, if the saw cut exceeds the limit specified in the service bulletin, the operator must contact the Manager of the Seattle Aircraft Certification Office (SACO) for approval of the repair, and therefore, it is redundant to require that same operator to report finding the saw cut again. The FAA does not agree that redundant reporting exists in many instances. The rule requires reporting within 7 days after detection of any inadvertent saw cuts. Only the repair for saw cuts which exceed the limit specified in the service bulletin must be *approved* by the Manager, SACO. Since all repairs do not require specific approval by the Manager, SACO, and quality control feedback is essential, paragraph C of the AD must be retained.

Since issuance of the NPRM, Revision 1 to Boeing Service Bulletin 737-25-1231, dated January 12, 1989, has been issued. The FAA has reviewed and approved the revision and has determined that compliance may also be made with the procedures as specified in Revision 1. The Revision provides for the installation of placards and provides procedures for removing the aft right flight attendant seat. The final rule has been changed to include this later revision as an optional service information source. This change does not increase the economic burden on any operator, nor does it increase the scope of the rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule, with the change previously noted.

There are approximately 80 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 15 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The placard may be manufactured locally and the cost is expected to be negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,200.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 737 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, as identified in Boeing Service Bulletin 737–25–1231, dated July 7, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure structural integrity of the occupied flight attendant seat mounted on the aft right lavatory during flight and emergency landing conditions, accomplish the following:

A. Within 30 days after the effective date of this AD, remove the aft right lavatory-mounted attendant seat or install a placard on the aft right lavatory-mounted flight attendant seat, stating: "NO OCCUPANCY", or equivalent. This placard may be removed or the seat reinstalled once the terminating action of paragraph B., below, has been accomplished.

B. Within 6 months after the effective date of this AD, inspect the aft right lavatory partition beam for an inadvertent saw cut, and repair, if necessary, in accordance with Boeing Service Bulletin 737–25–1231, dated July 7, 1988, or Revision 1, dated January 12, 1989; or if the saw cut exceeds the limit specified in the service bulletin, repair in a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Report all inadvertent saw cuts detected during the inspection required by paragraph B., above, to the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, within seven days after completion of the inspection.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective June 29, 1989.

Issued in Seattle, Washington, on May 15, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–12506 Filed 5–24–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87-CE-22-AD; Amdt. 39-6224]

Airworthiness Directives: SOCATA Models TB 20 and TB 21 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 87–12–09, Amendment 39–5650, applicable to certain SOCATA Models TB 20 and TB 21 airplanes, which presently requires initial and repetitive visual inspections of the aileron balance weight attachment rivets and aileron skins, replacement of loose rivets and repair of cracks in the aileron skins, or replacement of the ailerons. This AD revision incorporates terminating action for the repetitive inspections when the aileron is either replaced or repaired, and which thereby corrects an omission in the original issuance of AD 87–12–09 which placed an unnecessary burden on the public. In addition, the revision makes minor editorial changes to the AD.

DATES: *Effective Date:* June 25, 1989.

Compliance: As prescribed in the body of the AD.

ADDRESSES: SOCATA Aircraft Service Bulletin (S/B) No. 28, dated December 1986, applicable to this AD may be obtained from SOCATA Groupe AEROSPATIALE, B.P. 38, 65001 Tarbes, France; Telephone 62.51.73.00 or 62.93.99.45 (for recorder); or the Product Support Manager, U.S., AEROSPATIALE, 2701 Forum Drive, Grand Prairie, Texas 75053; Telephone (214) 641–3614. This information may also be examined at the Rules Docket, FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, ACE–109, Aircraft Certification Service, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 426–6932, or Mr. Roger Anderson, Aerospace Engineer, AEU–100, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy; Telephone (322) 513.38.30.

SUPPLEMENTARY INFORMATION: On June 24, 1987, AD 87–12–09, Amendment 39–5650, was published in the **Federal Register** (52 FR 23645). It required initial and repetitive visual inspections of the aileron balance weight attachment rivets and aileron skins, replacement of loose rivets, and repair of aileron cracks, or replacement of the ailerons on certain SOCATA Models TB 20 and TB 21 airplanes. Subsequently, the FAA has determined that the AD omits the terminating action embodied in the manufacturer's service information. Therefore, the AD is being revised to allow for cessation of the repetitive inspections when the aileron is either repaired or replaced. It also makes minor editorial changes. Because an unnecessary burden on the public exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are

impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to remove an unintentional burden on the public. If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "**ADDRESSES**" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends section 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By revising and reissuing AD 87-12-09, Amendment 39-5650 to read as follows:

SOCATA Groupe AEROSPATIALE: Applies to Models TB 20 and TB 21 (Serial Numbers 275 through 700) airplanes certificated in any category.

Compliance: Required within the next 50 hours time-in-service (TIS) after the effective date of this AD, and each 100 hours TIS thereafter, unless already accomplished in accordance with the original issuance of AD 87-12-09.

To prevent structural failure of the aileron, possible flutter, and loss of control, accomplish the following:

(a) Visually inspect the five aileron balance weight attachment rivets for any detectable looseness, and the aileron skin for cracks using the procedures described in paragraph A, SOCATA TB Service Bulletin (S/B) No. 28, dated December 1986.

(1) If one or more loose rivets, or cracks extending less than 9/16" (15 mm) from the center of the rivet is found, prior to further flight, repair as described in paragraph B of SOCATA TB Aircraft S/B No. 28, dated December 1986.

(2) If a crack 9/16" or longer from the center of the rivet is found, prior to further flight, replace the P/N TB 20.15.001.000 aileron with P/N TB 20.15.001.001 or P/N TB 20.15.001.002 aileron as applicable.

(b) The repetitive inspections specified in this AD are no longer required when the ailerons have been repaired or replaced per the actions specified in either paragraph (a)(1), or (a)(2) above.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Brussels Aircraft Certification Office, FAA, AEU-100, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000 Brussels, Belgium; Telephone (322) 513.38.30.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to SOCATA Groupe AEROSPATIALE, B.P. 38, 65001 Tarbes, France; Telephone 62.51.73.00 or 62.93.99.45 (for recorder); or the Product Support Manager, U.S., AEROSPATIALE, 2701 Forum Drive, Grand Prairie, Texas 75053; Telephone (214) 641-3614; or may examine these documents referred to herein at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This Amendment revises AD 87-12-09, Amendment 39-5650.

Issued in Kansas City, Missouri, on May 12, 1989.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-12505 Filed 5-24-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 86N-0337]

Oral Contraceptives; Patient Package Insert Requirement

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revising the requirements for patient package inserts (PPI's) for estrogen-progestogen combination oral contraceptive drug products. The revised requirements will help ensure that patient package inserts accurately reflect current information about this class of drug products.

EFFECTIVE DATE: September 22, 1989.

FOR FURTHER INFORMATION CONTACT: Adele S. Seifried, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 11, 1970 (35 FR 9001), FDA first required manufacturers and dispensers of oral contraceptives to make information available to patients about the use of these products. The regulation adopted at that time required that oral contraceptives be dispensed with a brief informational leaflet directed to the patient describing the product's benefits and risks. The leaflet—now called a patient package insert—contained information about side effects associated with use of oral contraceptives and emphasized the importance of patients discussing use of these drugs with their physicians. The leaflet noted that a booklet containing more information about the drug product was available from the patient's physician.

In 1978, in response to new information on the benefits and risks of oral contraceptive use, FDA revised its patient package insert requirements for oral contraceptives (see the **Federal Register** of January 31, 1978 (43 FR 4214)). As revised, the regulation significantly expanded the amount of information required to be provided to patients. The revised regulation contained detailed requirements on the content of the patient package insert and on the ways the inserts were to be prepared and distributed.

In the **Federal Register** of April 21, 1987 (52 FR 13107), FDA proposed to revise the requirements for patient package inserts for oral contraceptive drug products. These proposed changes were intended to simplify the content and format of the patient package insert to make the insert more understandable. The proposal was also designed to ensure that the insert could be revised in a more timely fashion to reflect current information about this class of drug products. In addition, FDA also proposed to delete the provisions in 21 CFR 310.501(b) that require patient labeling for oral postcoital contraceptives and in § 310.501a for

injectable medroxyprogesterone acetate for contraception because there are no marketed drug products currently approved for these uses.

II. Summary of Comments and the Agency's Responses

Interested persons were given 90 days to submit comments on the proposed rule. The agency received four comments. These are summarized below with the agency's responses.

1. *Should the regulation be changed?* One comment urged FDA to retain the existing regulation. The comment stated that the proposed revisions were unclear and would inhibit the necessary flow of information to women using oral contraceptives. The comment also requested a public meeting to discuss the rationale for the current regulation and proposed changes. Two other comments expressed general support for the proposed changes, stating that the changes will make it easier for the manufacturer to update the patient package insert to reflect new information, and, therefore, will make the patient package insert more timely and accurate.

The agency believes that the changes are needed to make patient labeling for oral contraceptives more understandable and accurate. In addition, the revised regulation will enable patient package inserts to reflect more expeditiously current information about this class of drug products. This final regulation will, therefore, improve rather than inhibit the flow of information to women using oral contraceptives by making it easier for manufacturers to update patient package inserts.

Because the changes follow notice and comment rulemaking, FDA does not believe a public meeting specifically to discuss these changes is needed. However, issues involving the labeling of oral contraceptives have been, and continue to be, regularly discussed in open session before FDA's Fertility and Maternal Health Drugs Advisory Committee. The agency believes that adequate opportunity for interested persons to express their views has already been granted.

2. *Format of patient package inserts.* Under the proposed rule, information required to be included in the patient package insert would appear as a list of general categories of information, rather than as a listing of specific items. One comment encouraged the agency to retain the listing of specific items rather than general categories, stating that this change could lead to labeling that is too technical for patients to understand. The comment stated that delays in updating labeling have not caused major health problems and, further, that additional changes in labeling should occur less frequently as marketing experience with oral contraceptive products increases.

Like the proposed rule, the final regulation lists general categories of information required to be included in the patient package insert. By no longer mandating the inclusion of specific items of information, the revision allows significant new information about the drug's benefits and risks to be reflected in the patient package insert without notice and comment rulemaking. This procedural change will facilitate communication of important new information about oral contraceptives to drug product users and will allow changes in patient labeling to parallel changes in professional labeling in a more timely fashion.

Although it may generally be true that the longer a product is on the market, the less the likelihood of a need for major labeling changes, it is also true that changes in technology and advances in medical knowledge often result in additional information or changes that should be included in all product labeling, including the patient package insert. As noted, the revisions in the regulation are designed to bring this new information to the attention of drug product users as quickly as possible.

Finally, the agency does not believe that the use of general labeling categories rather than specific wording requirements will, in itself, result in labeling that is difficult for consumers to understand. Moreover, FDA in its review of supplemental applications submitted to provide for the use of revised patient package inserts will be able to monitor changes in labeling to ensure that the new patient package inserts are both easy to read and technically accurate.

3. *Distribution of the patient package insert.* The proposal would have relaxed the current requirement that a patient package insert physically accompany every package throughout distribution, and would have allowed alternate distribution methods. Three comments urged the agency to require that the patient package insert be included in or attached directly to each dispensed package. The comments argued that this is the best method of assuring distribution of patient package inserts to all consumers.

The agency has carefully considered these comments. The agency agrees that the proposed change in distribution requirements may increase the likelihood that some patients may not receive the patient package insert. The agency also agrees that continuing to require the patient package insert to be included in or with each dispensed package would probably increase the likelihood that patients would receive the required information. Moreover, the agency notes that no comments expressed support for the proposed distribution scheme. For these reasons, the agency has concluded that the current provision requiring that the patient package insert be in or with each package of the drug product should be retained. Section 310.501(b) has been revised accordingly.

4. *Brief summary.* Under the existing regulation, manufacturers are required to include in each drug product package a separate brief summary with specified content. The proposal would eliminate the requirement for a physically separate summary, but would require a summary to be included as a part of the patient package inserts. Two comments urged FDA to continue to require distribution of a physically separate brief summary, arguing that some women will not take the time to read the longer and more detailed patient package insert, and will, as a consequence, miss much useful information.

First, it should be emphasized that this final rule, like the existing regulation, requires that each dispenser of an oral contraceptive drug product provide the patient with a written brief summary of the benefits and risks of oral contraceptive drug use. The difference between this rule and the existing provision is that the existing rule requires that the brief summary be in a physically separate document. The agency is not persuaded that continuing to require a physically separate brief summary would increase the likelihood that a woman would read the required information. Moreover, as explained above, to ensure that women will receive the patient package insert, the agency has revised the final rule to require that the patient package insert (including brief summary) be included in or with the dispensed package.

Finally, while manufacturers now have the flexibility of including the brief summary in the same leaflet as the longer patient package insert, the regulation does not preclude manufacturers from using two separate inserts, and manufacturers may continue to distribute the brief summary in a separate document if desired.

5. *Professional labeling—availability to consumers.* One comment objected to the provision in proposed § 310.501(c)(12) that would require that the patient package insert bring to the

user's attention the availability of professional labeling. The comment contended that the language in the professional labeling is too technical and confusing to understand and that the side effects listed might unnecessarily alarm patients. The comment concluded that the decision whether to make available additional information should be made by the health professional alone.

The statement in the patient labeling that refers patients seeking more information to the physician insert is intended primarily to advise the patient that such an insert exists and that it is available to the patient if the patient is interested in reading it. The agency believes that it is necessary and proper to inform patients that they may obtain additional information on the use of these drugs if they so desire. The existence and availability of such inserts is already known to many patients and the agency believes the information should be available equally to those patients who are less informed. Morever, as the agency has made patient labeling selective in scope—it does not attempt to describe all the information that is included in physician labeling—FDA would view as inappropriate the failure to advise patients that the patient labeling insert does not contain all the information that is provided with the drug. Therefore, the agency concludes that the reference in the patient labeling to the physician labeling should be retained.

6. *Labeling guidelines.* In the **Federal Register** of April 21, 1987 (52 FR 13132), the agency announced the availability of revised labeling guidelines for estrogen-progestogen combination oral contraceptive drug products. These guidelines for professional and patient package inserts were intended to serve as a labeling model to help manufacturers comply with pertinent labeling requirements.

The agency has reconsidered the use of guidelines for oral contraceptive drug product labeling. The agency has concluded that guideline texts for professional and patient package insert labeling for oral contraceptive drug products cannot be finalized in a timely manner to ensure that they reflect the most current medical knowledge of the agency. Therefore, in a notice published elsewhere in this issue of the **Federal Register**, the agency is revoking the guideline texts of professional and patient labeling for estrogen-progestogen combination oral contraceptive drug products. In its place, the agency will provide informal labeling guidance texts for combination estrogen-progestogen combination oral contraceptive drug products to assist manufacturers and others in meeting the labeling requirements of 21 CFR 310.501.

7. *Laboratory test interactions.* The agency on its own initiative is adding a new paragraph to require a precautionary statement regarding laboratory tests which may be affected by oral contraceptives at § 310.501(c)(10)(iii). The agency believes this warning is important because of the variety of endocrine and liver function tests and blood components which may be affected by estrogen-containing oral contraceptives and is within the scope of the notice of proposed rulemaking.

8. *Other changes.* On its own initiative, the agency has made several minor changes in the wording and order of paragraphs in the regulation for clarification and consistency with the labeling guidance text.

As noted, FDA is making available a guidance text for oral contraceptive patient package inserts. It should be emphasized that this revised guidance text applies only to combination estrogen-progestogen oral contraceptives. Manufacturers of such products may request the most current labeling guidance text for assistance in meeting the labeling requirements of this regulation.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Economic Impact

The agency has previously examined the economic impact of this final rule and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). FDA has not received any new information or comments that would alter its previous determination. The final regulation modifies the format of oral contraceptive labeling to make it more easily understood and readable. In addition, the regulation includes general categories of information to be included in the patient package insert, rather than a listing of specific items. No additional burdens are imposed upon manufacturers. Therefore, the agency concludes that this final rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that this final rule will not have a significant impact on a substantial number of small entities as defined by the Regulatory Flexibility Act.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR Part 310 continues to read as follows:

Authority: Secs. 501, 502, 503, 505, 701, 704, 705, 52 Stat. 1049–1053 as amended, 52 Stat. 1055–1056 as amended, 67 Stat. 477 as amended, 52 Stat. 1057–1058 (21 U.S.C. 351, 352, 353, 355, 371, 374, 375); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

2. Section 310.501 is revised to read as follows:

§ 310.501 Patient package inserts for oral contraceptives.

(a) *Requirement for a patient package insert.* The safe and effective use of oral contraceptive drug products requires that patients be fully informed of the benefits and the risks involved in their use. An oral contraceptive drug product that does not comply with the requirements of this section is misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act. Each dispenser of an oral contraceptive drug product shall provide a patient package insert to each patient (or to an agent of the patient) to whom the product is dispensed, except that the dispenser may provide the insert to the parent or legal guardian of a legally incompetent patient (or to the agent of either). The patient package insert is required to be placed in or accompany each package dispensed to the patient.

(b) *Distribution requirements.* (1) For oral contraceptive drug products, the manufacturer and distributor shall provide a patient package insert in or with each package of the drug product that the manufacturer or distributor intends to be dispensed to a patient.

(2) Patient package inserts for oral contraceptives dispensed in acute-care hospitals or long-term care facilities will

be considered to have been provided in accordance with this section if provided to the patient before administration of the first oral contraceptive and every 30 days thereafter, as long as the therapy continues.

(c) *Contents of patient package insert.* A patient package insert for an oral contraceptive drug product is required to contain the following:

(1) The name of the drug.

(2) A summary including a statement concerning the effectiveness of oral contraceptives in preventing pregnancy, the contraindications to the drug's use, and a statement of the risks and benefits associated with the drug's use.

(3) A statement comparing the effectiveness of oral contraceptives to other methods of contraception.

(4) A boxed warning concerning the increased risks associated with cigarette smoking and oral contraceptive use.

(5) A discussion of the contraindications to use, including information that the patient should provide to the prescriber before taking the drug.

(6) A statement of medical conditions that are not contraindications to use but deserve special consideration in connection with oral contraceptive use and about which the patient should inform the prescriber.

(7) A warning regarding the most serious side effects of oral contraceptives.

(8) A statement of other serious adverse reactions and potential safety hazards that may result from the use of oral contraceptives.

(9) A statement concerning common, but less serious side effects which may help the patient evaluate the benefits and risks from the use of oral contraceptives.

(10) Information on precautions the patients should observe while taking oral contraceptives, including the following:

(i) A statement of risks to the mother and unborn child from the use of oral contraceptives before or during early pregnancy;

(ii) A statement concerning excretion of the drug in human milk and associated risks to the nursing infant;

(iii) A statement about laboratory tests which may be affected by oral contraceptives; and

(iv) A statement that identifies activities and drugs, foods, or other substances the patient should avoid because of their interactions with oral contraceptives.

(11) Information about how to take oral contraceptives properly, including information about what to do if the patient forgets to take the product, information about becoming pregnant after discontinuing use of the drug, a statement that the drug product has been prescribed for the use of the patient and should not be used for other conditions or given to others, and a statement that the patient's pharmacist or practitioner has a more technical leaflet about the drug product that the patient may ask to review.

(12) A statement of the possible benefits associated with oral contraceptive use.

(13) The following information about the drug product and the patient package insert:

(i) The name and place of business of the manufacturer, packer, or distributor, or the name and place of business of the dispenser of the product.

(ii) The date, identified as such, of the most recent revision of the patient package insert placed prominently immediately after the last section of the labeling.

(d) *Other indications.* The patient package insert may identify indications in addition to contraception that are identified in the professional labeling for the drug product.

(e) *Labeling guidance texts.* The Food and Drug Administration issues informal labeling guidance texts under § 10.90(b)(9) of this chapter to provide assistance in meeting the requirements of this section. A request for a copy of the guidance texts should be directed to the Center for Drug Evaluation and Research, Division of Metabolism and Endocrine Drug Products (HFD–510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

(f) *Requirement to supplement approved application.* Holders of approved applications for oral contraceptive drug products that are subject to the requirements of this section are required to submit supplements under § 314.70(c) of this chapter to provide for the labeling required by this section. Such labeling may be put into use without advance approval by the Food and Drug Administration.

§ 310.501a [Removed]

3. Section 310.501a *Medroxyprogesterone acetate injectable for contraception* is removed.

Dated: May 2, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89–12511 Filed 5–24–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

RIN 0596–AA57

Ski Area Permits

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rulemaking sets forth special procedures for issuing special use permits for ski areas on National Forest System lands. These amendments implement the authority granted by the National Forest Ski Area Permit Act of October 22, 1986, to authorize nordic and alpine ski areas and facilities with a single permit for up to 40 years. The intended effect is to update the rules governing ski area permits to reflect the longer term now available and to establish orderly procedures for conversion of existing permits to the new, longer term permits.

EFFECTIVE DATE: June 26, 1989.

FOR FURTHER INFORMATION CONTACT: John Shilling, Recreation Management, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090 (202) 382–9426.

SUPPLEMENTARY INFORMATION: On October 18, 1988 (53 FR 40739–40742), the Forest Service published in the **Federal Register** proposed amendments to its Special Uses regulations at 36 CFR Part 251, Subpart B to implement the National Forest Ski Area Permit Act of 1986. The Act provides new authority to authorize ski areas for a term of up to 40 years. Previously, ski area permits were issued under the authority of the Act of March 4, 1915, which limits permits for resorts and other public facilities to a term of 30 years and a land area not to exceed 80 acres. The proposed rule set forth the procedures and criteria that would be applied in evaluating whether existing ski areas permits qualify for conversion to a longer term.

The Forest Service received 9 letters commenting on the proposed rule representing a broad spectrum of interested persons and entities. Respondents included a trade association representing the interest of ski areas currently holding special use permits, 2 recreation associations representing the interests of their members, one wildlife interest group, one university department of recreation resources, two Federal agencies, one individual permit holder, and one local government. All reviewers provided specific comments and suggestions on particular provisions. The major

comments with the Department's response are presented by section of the proposed rule. A new term permit for ski areas was developed after publishing the proposed rule. All applicable requirements of the current rule dealing with special uses, comments received on the proposed rule and all requirements of the final rule, are addressed in the permit. The ski industry was consulted during preparation of the permit.

Comments Relating to Specific Provisions of the Proposed Rule

Section 251.51—Definitions

The proposed rule added a definition for "ski area." Three respondents questioned what constitutes a ski area. One reviewer questioned what was meant by "preponderance " This reviewer was concerned over the possibility that a ski area might generate a substantial amount of revenue from food and lodging and therefore not qualify. The common definition of "preponderance" meaning superiority in numbers, or more than one-half, is intended. A review of a representative sample of ski area financial data has shown that revenue from the sale of lift tickets and ski school instructions accounts for 70 to 90 percent of total revenue subject to fee. It is evident from review of this financial data that not enough revenue would accrue from non-ski sources that a bonafide ski area would not be qualified to receive a permit under this authority.

One respondent suggested that revenue from "trail passes" be inserted into the list of revenue sources permissible for consideration. The Department feels this improves the definition and has added this term.

Two reviewers questioned the meaning of "ancillary facilities." One requested clarification, wondering if food and lodging facilities would be approved ancillary uses. The other stated that the word was too vague and that it might include things like condominiums, stores, sewage plants, lodges, and homes for the developer or manager of the facility. While none of the facilities listed by reviewers are specifically barred from national forest lands, under the appropriate authority, a decision to allow or disallow them in conjunction with a ski area is a discretionary decision of the Forest Service based on the specifics of a proposal. Food service is necessary for skiers. Lodging may be permitted if necessary and when private land is not available. A few condominiums have been allowed where private land has not been available, and their use is strictly controlled. If condominiums were to be allowed, their occupancy of National Forest System Lands—because of the ownership structure of condominiums—would not be authorized under the Ski Area Permit Act but under another, more appropriate Act. Ski shops are usually necessary to serve skiers and are allowed. The preferred location for sewage treatment plants is not on National Forest Lands. They are, however, not prohibited. The policy regarding employee housing is, like condominiums, one of giving preference to private land if it is available (without regard to cost). These facilities, with the exception of condominiums, if allowed and owned or under the control of the permittee would be authorized to occupy National Forest lands under a single ski area permit.

The Department does not find that the respondent's concern about appropriateness of facilities conflicts with the definition as drafted. While everyone knows a ski area when they see one, it is important that the term "ski area" be defined objectively. By identifying what a ski area is, the proposed definition would bar the issuance of a term permit under the authority of the National Forest Ski Area Permit Act for what are basically summer season operations but which may install a simple lift or engage in a minor nordic ski operation. Therefore, except for the addition of "trail passes," the definition is adopted as proposed.

Section 251.53. Authorities

This section added the National Forest Ski Area Permit Act of 1986 to the list of authorities under which a special use permit can be issued. The text of the proposed rule read as follows:

(n) Operation of nordic and alpine ski areas and facilities for up to 40 years and encompassing such acreage as determined necessary as authorized by the National Forest Ski Area Permit Act of 1986 (16 U.S.C 497b).

One reviewer recommended that the word "necessary" be struck and that the phrase, "sufficient and appropriate to accommodate the permittee's needs for ski operations," which is a portion of the language contained in the Act, be used instead. The case being made was that the word "necessary" was unduly restrictive, and that the wording in the law indicates a more accommodating posture.

The Department agrees in part. The sentence from the law reads, "A ski area permit— * * * (3) shall encompass such acreage as the Secretary determines sufficient and appropriate to accommodate the permittee's needs for ski operations and appropriate ancillary facilities;* * *." Therefore, we have replaced "necessary" with "sufficient and appropriate." However, because the wording proposed by the respondent could give the appearance that the decision as to what is sufficient and appropriate lies with the permittee, not with the authorized forest officer, the phrase "as determined by the authorized forest officer" has been added.

One respondent questioned the assertion in the proposed rule that the Act does not provide authority to issue permits when the improvements are owned by the United States. In the few cases where improvements are owned by the Government, the authority remains the Granger-Thye Act of 1950, the only authority the Forest Service has to rent or lease facilities. Therefore, resorts including ski areas with United States-owned facilities must continue to be authorized under the Granger-Thye Act.

Section 251.56(b) Duration and renewability

In the proposed rule, the existing text of § 251.56 was designated as paragraph (b)(1). This paragraph addresses requirements applicable to all authorizations. A new paragraph (b)(2) was added to address the duration and renewability of ski area term permits. One reviewer questioned the last sentence of paragraph (b)(1) which specifies that authorizations exceeding 30 years will provide for revision of terms and conditions at specified intervals to reflect changing times and conditions. This is the language in the current rule and was set out in the proposed rule because paragraph (b) had to be reorganized to accommodate special ski area provisions. One reviewer commented that the provision was contrary to the intent of the National Forest Ski Area Permit Act. While the Department does not agree with the reviewer about the intent of the Act, permit modification from time to time is provided for by the terms of the permit. The requirement for periodic revision was originally implemented for leases and rights-of-way issued under other authorities. Therefore, the final rule specifically exempts authorizations issued under the Ski Area Permit Act from revision at specified intervals.

Paragraph (b)(2) of the proposed rule set forth criteria to be considered in deciding the length of tenure appropriate for a specific ski area special use permit. To meet the requirement of the Act, it is necessary that the Secretary establish uniform rules for the Forest Service authorized officer so that there is consistency and even-handed treatment

of current and future permit holders in determining tenure. Comments were received from three reviewers regarding the criteria to be used by the authorized officer in determining under what circumstances a permit should be issued for a term of less than 40 years.

One reviewer believed it is unnecessary to establish criteria for determining when a permit of less than 40 years should be issued. In lieu of the criteria in the proposed rule, this reviewer felt that the rule should simply restate the language of the Act that authorizes the Secretary to issue permits up to 40 years. The Department disagrees. In charging the Secretary ordinarily to issue a permit for 40 years unless the Secretary determines there are specific reasons not to, the Congress effectively directed the Secretary to establish criteria for making that determination

Paragraph (b)(2)(i)(C) of the proposed rule stated that in establishing the financial need for a 40-year term permit, a permittee could not argue that the longer term was needed to cover regular, ongoing operation and maintenance costs. The Department felt this provision was necessary to bar what would effectively be mortgaging the underlying National Forest System land by a business that has insufficient cash flow from its operations to pay expenses. One respondent expressed the position that for a new ski area a portion of the capital might be needed for these purposes for at least the first 5 years for operation and this should not bar a permit from a full term of 40 years.

The Department agrees that the situation described could occur but believes that the rule should not be changed. Rather, this situation can best be handled by a provision in the ski area permit which grants a long-term permit but provides 5-year intervals for development and construction. This clause meets the proponent's need for a long-term permit and the Government's need to be able to rescind quickly the privileges of the permit should the permittee fail to perform. The clause reads as follows:

D. *Term.* For new areas or areas without a Master Development Plan.

1. This authorization is for a term of [5-year maximum] years to provide for the holder to prepare a Master Development Plan. Subject to acceptance of the Master Development Plan by the authorized officer, this authorization shall be extended for an additional [5-year maximum] years, for a total of _____years, to provide the holder sufficient time to construct sufficient facilities approved in the Master Development Plan within the schedule outlined in clause III.B. (Site Development Schedule), so that the area may be used by the public. Further Provided; This authorization shall be extended by its terms for an additional [30-year maximum] years, for a total of [40-year maximum] years, if it is in compliance with the site development schedule in the Master Development Plan and is in operation by the 10-year anniversary date of the issuance of this authorization. Failure of the holder to comply with all or any provisions of this clause shall cause the authorization to terminate under its terms.

The situation this reviewer describes would be satisfactorily accommodated by this clause. The total length of tenure, however, could be constrained to less than 40 years if other criteria listed at § 251.56(b)(2) apply.

In proposed § 251.56(b)(2)(i)(E), one criterion to be considered in deciding the length of term would be that the project envisioned in the Master Development Plan be of such magnitude that long-term financing and operation is clearly warranted. One reviewer expressed the opinion that the word "clearly" added a heightened level of scrutiny that seemed inappropriate and suggested the word be struck. We do not agree. A high level of scrutiny is necessary to meet the responsibility to the public in review and approval of projects which have the potential to occupy public lands for 40 years. It is, therefore, appropriate that there be a clear, evident need for long term financing and operation.

The same reviewer noted that where the proposed Rule referred to a Master Development Plan, the term was not defined. This reviewer requested that the Department explain the role of the Master Development Plan and its expected content. The plan is a document prepared by the proponent. It is a comprehensive and systematic approach to development, encompassing the entire resort complex as presently envisioned into the future, in connection with both private lands and National Forest System lands authorized under the special use permit. The Master Development Plan may consist of multiple documents such as the preliminary conceptual proposal, principal developmental stage, and supplemental revisions—including National Environmental Policy Act evaluation documents. The plan is dynamic in nature and may require revision as the need and changing times dictate. Upon approval, the plan revisions become part of the special use permit by appropriate amendment. Because of the dynamic nature of a Master Development Plan and the varying contents depending on the scope of the proposed operation, it is not possible to define with precision a Master Development Plan. Moreover, it is not necessary for implementation of the Act to include the definition in the rule.

A second reviewer posed a concern that the criteria could encourage development when the owner desires a longer permit. The reviewer argued that, in the quest to obtain a 40-year term, a ski area developer who might otherwise be satisfied with a small day ski area would be encouraged to build large, expensive facilities and to locate them on National Forest System lands. The Act and congressional intent is clear in this regard. A stated purpose of the Act is to provide for the "long-term construction, financing, and operation needs of ski areas on national forest lands." The Congress stated that it expects permits to ordinarily be issued for 40 years. The Department believes that other factors such as site utility; current and projected skier demand; market area; financial markets and tax considerations, will dictate the scope of planned development—not the criteria used by the authorized forest officer to evaluate permit term.

Proposed § 251.56(b)(2)(ii)(C) provided that, as a criterion for evaluating the need for a 40-year term permit, the full 40-year tenure must be consistent with the approved forest land and resource management plan. Section 6(i) of the National Forest Management Act of 1976 (16 U.S.C 1600–1614) requires that permits be consistent with land management plans. Rules implementing Forest Service planning are at 36 CFR Part 219, with minimum management requirements delineated at 36 CFR 219.27. These requirements essentially summarize other legal requirements such as the Historic Preservation Act, the Endangered Species Act, and good management practices. One reviewer asked that we "explain the circumstances that might induce the Service to write a forest plan that would cause a limitation on the issuance of a ski area permit." In response, resource allocations as developed in the forest plans might be constraining. An example could be the inability to meet all or any of these minimum management constraints in 36 CFR 219.27. In most cases, impacts can be acceptably mitigated. However, a competing potential use of the land with a higher public benefit could preclude development of a ski area. An example would be the need to construct a major reservoir which could flood the only potential base area for a ski operation. While the law requires that permits be consistent with plans, this can be achieved by modifying development proposals, by modifying the plans, or

both. Forest plans are more likely to identify potential opportunities and local interest in development of a ski area rather than bar their construction.

Proposed § 251.56(g) set forth the requirements by which existing permits may be converted to the longer term permit offered by the new act. The proposal would require the Forest Service to offer a new permit but allows the existing permittee to decide whether or not to convert. Paragraph (g)(3)(ii) would require that any current permittee who consents to conversion must meet the criteria for determining length of term set forth in § 251.56(b)(2). One reviewer recommended this section be eliminated. This reviewer contends the criteria are outside the scope of the Act. The Department does not agree. If a permittee converts to the new permit, the term of that permit must be established. The law does not grant an automatic 40-year term to converted permits. In fact, in the committee reports accompanying the Act, the Congress stated it was not their expectation that every ski area would get a 40-year term permit, or even that the "preponderance" of areas get a 40-year term. Existing ski areas vary immensely in financial or operational need. Guidance is necessary to assist the authorized officer in making the determination for length of tenure in the conversion of existing permitted operations. Because there is no basis for establishing a separate criterion for terms of converted permits, this criterion is adopted without change in the final rule.

Section 251.56(g)(4) of the proposed rule provided that, if a permittee has declined to accept a new permit under the National Forest Ski Area Permit Act but subsequently desires a modification to the existing permit, it would be mandatory to obtain a new permit under the new act. This would mean that it would not be possible to amend a current ski area term permit issued under the Act of 1915. One reviewer recommended replacement wording: "A holder retains the right to decline a new authorization offered pursuant to this paragraph and to continue to operate under the terms of the existing permits until the existing term permit expires at which time the holder must convert to a permit issued under the authority of the National Ski Area Permit Act of 1986."

The Department disagrees with this recommendation because it precludes amendment of the terms of a permit and would prolong the dual ski area permit system. It is clear Congress intended to provide for the eventual elimination of the dual permit system. Congress was also sympathetic to the desire of any permittee who chose to retain existing permits to be able to do so. While an existing holder has the right under the act to accept or reject a new permit, from time to time it may become necessary to agree bilaterally to amend a term permit to provide for changed conditions. If a change occurs that would necessitate amendment of the existing term permit, the Agency should be able to insist that a new permit be issued under the National Forest Ski Area Permit Act of 1986, to hasten the replacement of the dual permit system. However, the Department is sensitive to the possible need of some permittees to retain their permits for business or financial reasons. Therefore, the final rule has been changed by adding "unless the holder provides compelling justification for retaining the existing permit."

The proposed rule would have added a new paragraph (h) to § 251.56 dealing with periodic revision of ski area authorizations. This section would have provided for a ten-year revision of the terms to be specified in the permit to accommodate decisions made in forest resource and land management plan which is to be revised on a 10–15 year cycle. Two reviewers were concerned that the ten-year provision rule may not be sufficient to allow for placing necessary controls on the permit holder for environmental protection. Another respondent cautioned that the requirement was beyond the scope of the Act. This reviewer took the position that the rule would effectively create a ten-year permit with 3 ten-year renewal options. In considering reviewers' comments, the Forest Service has concluded that the intent of this proposed provision can be adequately met by the clauses in the ski area permit which give the authorized officer the authority needed to revise permits for environmental protection, public health, and safety needs. Therefore, paragraph (h) has not been retained in the final rule.

Section 251.17(h)—Rental Fees

The proposed rule added a new provision that would make existing ski area permits subject to any new fee system that might be developed. This provision also expressly asserted the authority of the Forest Service to make adjustments to the current fee system. Four comments were received on rental fees for ski areas. Three of these supported this provision, stressing the importance of the Forest Service obtaining fair market value for the use of the National Forest System lands. These reviewers agreed that provisions should be made to keep the fee system sufficiently flexible so that it will continue to obtain fair market value rental fees and if a new system is developed, that this new system could be applied to all existing permits. The Department is directed by the Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701) and Bureau of the Budget Circular A–25 to receive fair market value for permitted uses. In enacting the National Forest Ski Area Permit Act, the Congress reiterated that fees shall be based on fair market value. The Forest Service uses a fee determination method called the Graduated Rate Fee System which was designed to obtain fair market value for the larger resort developments on the National Forests. The system was designed from empirical data of winter sports sites on the National Forests using records maintained for Federal income tax purposes. The fee is a function of revenue generated and the owner's investment as determined from capitalized assets. The system, as designed, obtains a fair market value for the use of the National Forest lands.

Two respondents objected to paragraph (h) because it would allow the Forest Service to make changes to the fee system or to implement a new fee system. However, the basic premise—that these changes would be made to obtain fair market value was not challenged by these reviewers. One respondent proposed alternative language which combines the language of the proposed rule with the requirement to obtain fair market value. The Department agrees with this, and the reviewers' proposal has been adopted in the final rule. In addition, to implement this provision, the following ski area term permit clause has been drafted:

Holder to pay fair market value for the permitted use. The holder must pay fair market value for the use of National Forest System land.

1. The provisions of the Graduated Rate Fee System (GRFS) identified under this permit may be revised by the Forest Service to reflect changed times and conditions. Changes will become effective when:

a. Mutually agreed; or,

b. Permit is amended for other purposes; or,

c. A new permit is issued including reissue after termination.

2. The Graduated Rate Fee System may be replaced in its entirety by the Chief of the Forest Service if a new generally applicable fee system is imposed affecting all holders of authorizations under Pub. L. 99–522. Replacement shall become effective on the beginning of the holder's business year following establishment.

General Comments

Restriction of access and size of area under permit

Five of the 8 reviewers expressed concern regarding the amount of National Forest System land that would be put under permit for ski areas and possible limitation on public access for other forms of recreation imposed by the permit holder. In response, all National Forest System lands are opened to public entry unless specifically closed. Specific authorization is not required to use National Forest System lands or facilities for camping, picnicking, hiking, fishing, hunting, horse riding, boating, or similar recreational activity, unless specifically closed for good reasons as authorized in 36 CFR Part 261 Subpart B. There was fear expressed that a 40-year leasehold estate would be created. Neither the Act nor the regulation would create a leasehold estate. The authorizing document is not a lease but a term permit, which is defined at § 251.51 as, "a special use authorization to occupy and use National Forest System land, other than rights-of-way under § 251.53(1) of this part, for a specified period which is both revocable and compensable according to its terms." Pursuant to 36 CFR 251.55 which addresses the permittee's "Nature of Interest" the Government retains the right of access and to make other uses of the area. Neither the character and use of the lands nor a permittees interest will change from the current situation as a result of issuing a new ski area permit.

Regarding the size of the area under permit, although ski areas are currently under the authorization of an annual permit, converting them to a term permit which may extend to 40 years will not be done without consideration of the consequences. Forest Supervisors will give serious consideration to the placement of the permit boundary and lands included therein and will continue to be directed by § 251.55(d) which requires that the lands under permit will be limited to that which the authorized officer determines: (1) Will be occupied by the facilities authorized; (2) to be necessary for the construction, operation, maintenance, and full utilization of the authorized facilities or the conduct of authorized activities; and, (3) to be necessary to protect the public health and safety and the environment. Lands not currently meeting these criteria will not be included and lands which in the future fail to meet the criteria may be withdrawn from the permit unilaterally by the authorized officer. Permit clauses to address the size of the area read as follows:

Non-exclusive Use. This permit is not exclusive. The Forest Service reserves the right to use or permit others to use any part of the permitted area for any purpose, provided such use does not materially interfere with the rights and privileges hereby authorized.

Area Access. Except for any restrictions as the holder and the authorized officer may agree to be necessary to protect the installation and operation of authorized structures and developments, the lands and waters covered by this permit shall remain open to the public for all lawful purposes. To facilitate public use of this area, all existing roads or roads as may be constructed by the holder, shall remain open to the public, except for roads as may be closed by joint agreement of the holder and the authorized officer.

Periodic Revision. 1. The terms and conditions of this authorization shall be subject to revision to reflect changing times and conditions so that land use allocation decisions made as a result of revision to the Forest Land and Resource Management Plan may be incorporated.

2. At the sole discretion of the authorized officer this term permit may be amended to remove authorization to use any National Forest System lands not specifically covered in the Master Development Plan and/or needed for use and occupancy under this authorization.

National Environmental Planning Act Compliance

One reviewer submitted comments and recommendations on the Forest Service's policy and procedures for complying with the requirements of National Environmental Policy Act (NEPA) in acting on ski area permits in general. These comments were beyond the scope of this rule. This reviewer also stated that it was unclear how the Forest Service reached the position that the promulgation of these rules will have no significant impact on the environment. In response, the Department wants to emphasize that the NEPA process is not in anyway pre-empted by these rules. The focus of the National Forest Ski Area Permit Act was to eliminate the dual permit system by removing the 80-acre limitation and to provide for improved financial security of ski area permittees by increasing the maximum term from 30 to 40 years. Congress was dealing with the instruments of authorization and not with land allocation decisions nor questions of environmental concern. The proposed rule was, therefore, limited to those procedures necessary to implement the Act. For this reason, the proposed rule itself was not found to have a significant effect on the quality of the human environment. Neither the Act nor these rules relieve the Forest Service in its management of all aspects of the National Forest System lands of any duty under any other Act. In fact, compliance with the National Environmental Policy Act and the National Forest and Rangelands Renewable Resources Planning Act as amended by the National Forest Management Act were specifically cited in the National Forest Ski Area Permit Act of 1986. At every decision point for each stage of the development of a ski area, it is necessary to undertake environmental analysis and to document these analyses in either an Environmental Assessment or an Environmental Impact Statement.

The same reviewer took the opportunity to call attention to the necessity for ski areas to comply with section 319 requirements of the Clean Water Act of 1987, which establishes a new non-point source management program for all States and requires that Federal projects be consistent with the State's Management Program. There are many State, local and other Federal laws and regulations which affect ski areas. The rules already require permit holders to abide by all applicable laws; therefore, there is no need for a redundant provision in this rulemaking. In addition, the ski area permit contains the following clause, which is very similar to the current existing clause found in all special use permits and which addresses this requirement:

Rules, Laws and Ordinances. The holder, in exercising the privileges granted by this term permit, shall comply with all present and future regulations of the Secretary of Agriculture and federal laws; and all present and future, state, county, and municipal laws, ordinances, or regulations which are applicable to the area or operations covered by this permit to the extent they are not in conflict with federal law, policy or regulation. The Forest Service assumes no responsibility for enforcing laws, regulations, ordinances and the like which are under the jurisdiction of other government bodies.

Another respondent was concerned that the 10-year periodic revision of the rule may not provide sufficient flexibility for a Forest Supervisor to make mid-term permit modifications in response to impacts to fish and wildlife resources that were unforeseen at the time a permit was issued. The 10-year periodic revision has been dropped (§ 251.56(h)). Very strong controls for all areas of natural resource protection and management exist in the terms of the permit itself and elsewhere within 36 CFR Parts 251 and 261. In addition to the permit clause on Rules, Laws, and Ordinances, the holder is required to maintain the improvements and premises to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized

officer. Standards are subject to periodic change by the authorized officer. The holder must prepare and annually revise an operating plan to cover winter and summer operations as appropriate. The provisions of the approved operating plan and the annual revisions become a part of the permit. In the approval process for the operating plan, the authorized officer may define areas to be addressed in addition to the required areas of vegetation management, erosion control, etc. When quick action is needed, the authorized officer may require immediate temporary suspension of the operation, in whole or in part, when it is determined to protect public health, safety, or the environment.

One reviewer suggested it would be wise to provide for varying tenure for occupancy of different structures on national forest lands. The example was given that while it may be appropriate to provide long tenure for a lift facility, other facilities such as a sewage treatment plant might warrant a shorter tenure. The reviewer believes a shorter tenure could also be offered to encourage or require that some inappropriate uses be phased out and moved to private lands. For facilities that may cause environmental problems, the mechanisms exist under the permit for correcting the problem or removing the facility. If in the planning, it was determined that employee housing would have to be provided, with the consent of the authorized officer, for the first ten years until a community base was established on private lands, this could be approved as part of the acceptance of the Master Development plan which becomes part of the special use permit.

Transfer of Permits. One respondent expressed the opinion that the Forest Service should be concerned with the transferring of the new long-term permits to new owners of the improvements. Given the substantially longer tenure, they believe some limits and conditions should be set. Existing § 251.59, Transfer of special use privileges, specifies that a buyer of the permit holders improvements must qualify and agree to comply with and be bound by the terms and conditions of the special use permit and such new conditions as may warrant. In addition, a clause in the ski area term permits addresses this requirement as follows:

Divestiture of Ownership. Upon change in ownership of the facilities authorized by this permit, the rights granted under this authorization may be transferred to the new owner upon application to and approval by the authorized officer. The new owner must qualify and agree to comply with and be bound by the terms and conditions of the authorization. In granting approval, the authorized officer may modify the terms, conditions, and special stipulations to reflect any new requirements imposed by current Federal and state land use plans, laws, regulations or other management decisions.

A concern was also expressed that there was an increasing trend for ski areas to be sold and often to foreign corporations. The Department has not seen an increase in the rate of sale of ski areas on National Forest System lands. Changes in ownership occur infrequently. We are aware of only two areas of 165 which have foreign corporations as parent companies. Without legislation to the contrary, sale to foreign owners is not prohibited if they meet the financial qualifications.

One reviewer believed the new permit presented an opportunity to strongly endorse and even require major ski areas to be active partners in the Agency's Resort Naturalist program. The Agency is actively working with its ski area permittees to initiate programs which will increase public understanding and appreciation for natural resource management but does not believe it is appropriate to require participation as a condition of a permit.

Having considered the comments received, the Department is adopting final rules to govern issuance of new ski area permits and conversion of existing ski area permits. The rule contains the provisions from the proposed rule except as noted in the preceding responses to comments. These rules address the tenure and renewability of ski area permits. The rules do not directly or indirectly provide for nor abrogate any change to any specific use of National Forest System lands or decisions affecting use of these lands.

Regulatory Impact

This rule has been reviewed under USDA procedures and Executive Order 12291. It has been determined that this regulation is not a major rule. Little or no effect on the economy will result from this regulation since it affects only those parties who occupy or use land within the National Forest System for ski area development. The effect of the law is to marginally increase net benefits to the Government and the permittees by reducing the number of special use permits issued and thus the administrative costs associated with issuance The issuing of regulations and the conversion of all existing ski area permits to the new authority, subject to permittee concurrence, is a requirement of the law governing ski area permits

The Department of Agriculture has determined that this action will not have a significant effect on a substantial number of small entities. Furthermore, it does not directly result in additional procedures or paperwork not already required by law. The special use authorization and application procedures applicable to obtaining new ski area permits are cleared for the uses of this final rule and have been assigned OMB control No. 0596–0082. These information collection requirements are approved for use through August 31, 1989. Information requirements in the ski area permit are currently under review by the Office of Management and Budget, notice of which was given in the **Federal Register** on April 4. 1989, at 54 FR 13537.

Based on past experience and environmental analysis, this rule in and of itself will have no significant effect on the human environment, individually or cumulatively. Therefore, it is hereby excluded from documentation in an environmental assessment or an environmental impact statement (40 CFR 1508.4).

List of Subjects in 36 CFR Part 251

Electrical power, Mineral resources, National forests, Public lands rights-of-way, Reporting and recordkeeping requirements, Water resources.

Therefore, for the reasons set forth in the preamble, Subpart B—Special Uses of Part 251 of Title 36 of the Code of Federal Regulations is amended as follows:

PART 251—LAND USES [AMENDED]

Subpart B—Special Uses [Amended]

1. The Authority citation for Subpart B is revised to read as follows:

Authority: 16 U.S.C. 472, 497b, 551, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761–1771.

2. In § 251.51, add the following definition in the appropriate alphabetical order:

§ 251.51 Definitions.

* * * * *

"Ski area"—a site and attendant facilities expressly developed to accommodate alpine or nordic skiing and from which the preponderance of revenue is generated by the sale of lift tickets and fees for ski rentals, for skiing instruction and trail passes for the use of permittee-maintained ski trails. A ski area may also include ancillary facilities directly related to the operation and support of skiing activities.

* * * * *

3. In § 251.53, revise the introductory text and add a new paragraph (n) to read as follows:

§ 251.53 Authorities.

Subject to any limitations contained in applicable statutes, the Chief of the Forest Service, or other Agency official to whom such authority is delegated, may issue special use authorizations for National Forest System land under the authorities cited and for the types of use specified in this section as follows:

* * * * *

(n) Operation of nordic and alpine ski areas and facilities for up to 40 years and encompassing such acreage as the Forest Officer determines sufficient and appropriate as authorized by the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b).

4. In § 251.56 revise paragraph (b) and add new paragraph (g) to read as follows:

§ 251.56 Terms and Conditions.

* * * * *

(b) *Duration and renewability*—(1) *Requirements.* If appropriate, each special use authorization will specify its duration and renewability. The duration shall be no longer than the authorized officer determines to be necessary to accomplish the purpose of the authorization and to be reasonable in light of all circumstances concerning the use, including (i) resource management direction contained in land management and other plans; (ii) public benefits provided; (iii) cost and life expectancy of the authorized facilities; (iv) financial arrangements for the project; and (v) the life expectancy of associated facilities, licenses, etc. Except for special use authorizations issued under the National Forest Ski Area Permit Act of 1986, authorizations exceeding 30 years shall provide for revision of terms and conditions at specified intervals to reflect changing times and conditions.

(2) *Ski area permits.* (i) For authorizations issued under the National Forest Ski Area Permit Act of 1986, the authorized officer normally shall issue a ski area authorization for 40 years, if, upon consideration of information submitted by the applicant, the authorized officer finds that the ski area development meets the following standards:

(A) In the case of an existing permit holder, existing on-site investment is of sufficient magnitude to justify authorization for 40 years;

(B) In the case of an existing permit holder, existing investment of capital is in ski-related facilities;

(C) Planned investment capital is directly related to development of ski area facilities and is not for financing regular, ongoing operation and maintenance costs;

(D) Ski facilities requiring long-term investment are, or will be, located predominately on land authorized under a permit;

(E) The number and magnitude of planned facilities, as detailed in a Master Development Plan, clearly require long-term financing and/or operation;

(F) The United States is not the owner of the principal facilities within the authorized ski area.

(ii) A term of less than 40 years shall be authorized for a ski area when the applicant requests a shorter term or when, in the authorized officer's discretion:

(A) Analysis of the information submitted by the applicant indicates that a shorter term is sufficient for financing of the ski area;

(B) The ski area development, whether existing or proposed, does not meet the standards of paragraph 2(i)(A)-(F) of this section; or

(C) A 40-year authorization would be inconsistent with the approved forest land and resource management plan governing the area (36 CFR Part 219).

* * * * *

(g) *Conversion of Ski Area Authorizations.* (1) The Forest Service shall request that all existing permit holders convert existing authorizations for ski areas to a new authorization issued pursuant to the National Forest Ski Area Permit Act.

(2) Any current holder of a ski area permit who wishes to convert an existing permit to one issued pursuant to the National Forest Ski Area Permit Act must submit a written request for the new authorization to the authorized officer.

(3) With the consent of the holder, the authorized officer shall convert the authorization if:

(i) The holder is in compliance with the existing authorization;

(ii) All fees currently due under the existing authorization are paid in full; and

(iii) Any proposed modifications of terms and conditions of the existing authorization included in a request for conversion meet the standards of paragraphs (2)(i) (A) through (F) of this section and the relevant requirements of this subpart.

(4) A holder retains the right to decline a new authorization offered pursuant to this paragraph and to continue to operate under the terms of the existing permit. However, pursuant to the rules at § 251.61 of this subpart, major modifications of existing permits shall require conversion to a permit issued under the authority of the National Forest Ski Area Permit Act, unless the holder provides compelling justification for retaining the existing permit.

7. In § 251.57, add a new paragraph (h) as follows:

§ 251.57 Rental fees.

* * * * *

(h) Each ski area authorization issued under the authority of the National Forest Ski Area Permit Act shall include a clause that provides that the Forest Service may adjust and calculate future rental fees to reflect Agency revisions to the existing system for determining fees based on fair market value or to comply with any new fee system for determining fees based on fair market value that may be adopted after issuance of the authorization.

Clayton Yeutter,

Secretary.

Date: May 19, 1989.

[FR Doc. 89-12493 Filed 5-24-89; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPTS-00085A; FRL-3575-7]

Toxic Substances Control Act Regulations; Correction of Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Technical amendment correction.

SUMMARY: EPA issued a technical amendment, which was published in the **Federal Register** of April 15, 1988 (53 FR 12522), to some of the rules under the Toxic Substances Control Act. On page 12524, in the list of paragraphs in 40 CFR 761.60 where "50 ppm" was revised to read "500 ppm," inadvertently paragraph (a)(1) was included. The reference should have remained "50 ppm" because EPA did not intend to change the scope of regulatory coverage of § 761.60. This document corrects that mistake.

DATE: This correction is effective May 25, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Environmental Protection Agency, Rm. EB-44, 401 M Street SW., Washington, DC 20460, (202-554-1404), TDD: (202-554-0557).

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous materials, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: May 17, 1989.

Cynthia Stroup,

Acting Director, Exposure Evaluation Division.

Therefore, 40 CFR Part 761 is amended as follows:

PART 761—[AMENDED]

1. The authority citation for Part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, and 2611; Subpart G also issued under 15 U.S.C. 2614 and 2616.

§ 761.60 [Amended]

2. In § 761.60(a)(1), "500 ppm" is revised to read "50 ppm."

[FR Doc. 89–12561 Filed 5–24–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 81–742, FCC 89–108]

Broadcast Services; License Renewal Process

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action (1) imposes limitations on the settlements of competing applications and petitions to deny filed in the license renewal context; (2) requires a case-by-case review of citizens' agreements reached in the license renewal context to ensure that they are in the public interest; (3) modifies the Commission's policy regarding enforcement of programming-related promises in citizens' agreements; and (4) eliminates the Commission's policy of permitting competing applicants in license renewal proceedings to rely on the availability of an incumbent licensee's transmitter site.

This action is taken by the Commission generally to eliminate abuse of its license renewal process. This action should (1) discourage persons from filing competing applications and petitions to deny in broadcast license renewal proceedings with the purpose of settling out for a profit; (2) ensure that citizens' agreements reached in the license renewal context are consistent with the public interest; (3) conform the Commission's policy regarding enforcement of citizens' agreements with its deregulatory initiatives; and (4) require all competing applicants to establish reasonable assurance of the availability of a transmitter site to discourage the filing of non *bona fide* applications and to provide an independent basis for comparing the technical proposals of the incumbent and competing applicants.

EFFECTIVE DATE: June 28, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marilyn Mohrman-Gillis, Policy & Rules Division, Mass Media Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION: 1. The information collection and reporting burden on persons seeking Commission approval for the dismissal of pre-Initial Decision competing applications and for non-monetary citizens' agreements is estimated to average fifteen minutes per response. The information collection and reporting burden on persons seeking Commission approval for the settlement of post-Initial Decision competing applications and petitions to deny is estimated to average two hours per response. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of the Managing Director, Washington, DC 20554, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

2. This is a summary of the Commission's "Report and Order" in BC Docket No. 81–742, adopted March 30, 1989 and released May 16, 1989. The full text of the Commission's decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857–3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

Background

3. This rule making action addresses three broad issues raised for comment in the Commission's "Second Further Notice of Inquiry and Notice of Proposed Rule Making in BC Docket No. 81–742," 53 FR 31894 (Aug. 22, 1988) ("Second Further Notice"), a comprehensive inquiry on reform of the broadcast license renewal process.

4. First, in response to troubling allegations that some parties might be using the license renewal process to obtain payments or benefits from the renewal applicant unrelated to legitimate public interest aims, the Commission invited public comment on this alleged abuse. Specifically, the Commission asked whether competing applications (applications for construction permits for broadcast facilities that are mutually exclusive with renewal applications filed by incumbent licensees) and petitions to deny were being filed against license renewal applicants for the purpose of exacting large settlement payments for dismissing these challenges, and whether limitations on settlement payments would help curb such abuse. Related to this issue was whether the limits should extend to citizens' agreements (agreements between broadcasters and citizens' groups generally regarding programming or employment matters) reached in exchange for dismissing petitions to deny filed in the license renewal context. In response, virtually all commenters, representing both industry and public interest groups, asserted that abuse is a serious problem that warrants immediate Commission action. The clear majority of commenters supported limitations on settlement payments for the dismissal of both competing applications and petitions to deny.

5. Second, the Commission sought comment on whether it should modify its policy regarding enforcement of program-related promises made in citizens' agreements, "Agreements Between Broadcast Licensees and the Public," 57 FCC 2d 42 (1975), particularly since it no longer required detailed programming proposals in conjunction with renewal applications and no longer applied a "promise versus performance" standard to renewals. Accordingly, the Commission asked whether it should eliminate its policy of regarding program-related promises made in citizens' agreements as commitments to the Commission to be relied upon in its decision making processes. Only a few parties (five of twenty-nine commenters and reply commenters) addressed the issue of enforcement of citizens' agreements. The majority of these urge the Commission to maintain its current enforcement policies.

6. Finally, the Commission sought comment on whether it should eliminate what is known as the *Cameron* doctrine,

a policy that allowed a competing applicant in a comparative renewal proceeding to presume that the incumbent licensee's transmitter site would be available to it if it prevailed. *See George E. Cameron Jr. Communications*, 71 FCC 2d 460 (1979). The Commission was concerned that the presumption, among other things, facilitated the filing of non *bona fide* applications by permitting renewal challengers merely to clone technical proposals submitted by the renewal applicants. All of the eight commenters that addressed the issue advocated elimination of the *Cameron* presumption.

7. The Commission also sought comment on other proposed reforms of the license renewal process, but stated they would be resolved separately. First, it sought comment on whether it should modify FCC Form 301 to require competing applicants in the license renewal context to submit additional information as another means of deterring non *bona fide* applicants. The Commission incorporated the record regarding Form 301 into General Docket No. 88-328, which dealt with proposed Form 301 amendments for all construction permit applications, including those in the renewal context. The Commission adopted a "Report and Order in Gen. Docket No. 88-328," FCC 89-110, 54 FR 19951 (May 9, 1989), which amended Form 301 to require all applicants for construction permits to provide more financial, ownership, and integration information.

8. The Commission also sought comment on proposals for reforming the standards used in comparative hearings to determine whether an incumbent licensee or a competing applicant will best serve the public interest, convenience, and necessity. Specifically, the Commission sought comment on proposals to clarify its standards for awarding a so-called "renewal expectancy," a credit awarded to incumbent licensees for "meritorious" service that meets the needs and interests of its community of license; and on proposals to eliminate or reduce in weight certain of the criteria used to compare incumbent licensees and competing applicants in a renewal proceeding.

For reasons stated in a separate "Third Further Notice of Inquiry and Notice of Proposed Rule Making in BC Docket No. 81-742," FCC 89-109 (adopted March 30, 1989), the Commission decided to seek comment on an additional proposal for making the Commission's renewal expectancy standard more concrete and less subject to protracted litigation and abuse. It stated that those portions of BC Docket No. 81-742 pertaining to the renewal expectancy standard, as well as the other comparative criteria, would therefore be held open pending further comment.

Rule and Policy Changes

9. *Settlement Limitations.* Based upon a careful review of the record, as well as its own experience in administering the licensing process, the Commission recognized that its existing policies, albeit unintentionally, were providing mechanisms and incentives for abuse of its processes. As one measure to curb the abuse, the Commission imposed limitations on settlements of license renewal challenges. With regard to settlements of competing applications, the Commission banned all payments to competing applicants (other than the incumbent licensee) for withdrawing an application prior to the Initial Decision stage of a comparative hearing, and thereafter, restricted payments to the legitimate and prudent expenses of the withdrawing applicant. With regard to settlements of petitions to deny license renewal applications, the Commission's new policies depend on whether the petition is dismissed in exchange for money or promises to implement some type of nonfinancial reform. Where a petition is dismissed for money, the Commission limited any settlement payments to the legitimate and prudent expenses of the withdrawing petitioner. Where a petition is dismissed for a promise by the licensee to implement a nonfinancial reform, such a settlement, which is generally referred to as a citizens' agreement, must be reviewed and approved by the Commission under its public interest standard. In reviewing such agreements, the Commission stated that it would apply a rebuttable presumption that any agreement in which the petitioner is paid to perform the promised reform would be regarded as contrary to the public interest.

10. The Commission imposed limitations on settlements of competing applications to assure that such applications are filed for the purpose of obtaining a broadcast license rather than to settle out for a profit. It stated that banning payments for settlements of all pre-Initial Decision applications should also: (1) Increase the likelihood that only serious, *bona fide* applicants (those that are willing to develop a complete record of the issues) will have the opportunity to settle for expenses; (2) prevent non *bona fide* applicants from exerting undue pressure on incumbents to settle early in a comparative proceeding; and (3) encourage all applicants (knowing they will only be able to settle for expenses if they survive the hearing) to evaluate the risks and benefits of their applications before filing. Moreover, by permitting post-Initial Decision settlements for expenses, the Commission recognized that settlements, where abuse is not a factor, can be an efficient means to terminate a renewal challenge.

11. The Commission determined that these limitations do not apply to the dismissal of a renewal application by an incumbent licensee. The Commission found that it is unlikely that an incumbent has filed a renewal application with the intent of settling out for a profit. Moreover, a licensee that no longer wishes to be in the broadcast business should be permitted to dismiss a renewal application with no restrictions.

12. In imposing limitations on settlements of competing applications, the Commission addressed the issue of whether the particular limitations imposed were authorized by section 311(d), of the Communications Act. Section 311(d) was amended in 1981 to provide that the Commission shall approve a settlement agreement "only if it determines that (A) the agreement is consistent with the public interest, convenience, or necessity; and (B) no party to the agreement filed its application for the purpose of reaching or carrying out such agreement."

13. Upon close scrutiny of the statute, the legislative history, and the comments submitted regarding the Commission's authority under section 311(d), the Commission determined that nothing in the statute denies the Commission the authority to establish reasonable parameters for when and under what circumstances payments pursuant to settlement agreements do not serve the public interest. First, settlement restrictions are completely consistent with the plain language of section 311(d). The only constraint on the Commission's authority to approve settlements is that they must be consistent with the public interest, and the application must not have been filed for the purpose of reaching the settlement. Second, the Conference Report only instructs that section 311(d) was intended to prevent a person from filing a "frivolous application * * * to harass an incumbent" or to "offer[ ] to withdraw the frivolous applications upon payment of money * * *." This is precisely the intent of the settlement limitations the Commission imposed. Moreover, nothing in the statutory language or the legislative history requires the Commission to proceed on

an *ad hoc*, case-by-case basis. Instead, the statute merely makes explicit the Commission's broad authority to decide what settlement standard would best serve the public interest.

14. In imposing settlement limitations, the Commission stated that it would no longer adhere to its prior reasoning in *Western Connecticut Broadcasting Co.*, 88 FCC 2d 1492 (1982). In *Western Connecticut*, the Commission eliminated a legitimate and prudent expense limitation that it imposed on settlements of competing applications prior to the enactment of section 311(d). In so doing, the Commission noted that since settlements would be reviewed in accordance with the newly amended section 311(d), there was no further need for the settlement limitations. After careful examination, the Commission stated that it did not sufficiently consider other factors that bear on settlements in the renewal context, including the potential for abuse. It decided, therefore, expressly to depart from *Western Connecticut*.

15. The Commission also imposed legitimate and prudent expense limitations on monetary settlements of petitions to deny license renewal applications to remove the profit motive for filing petitions to deny. The Commission permitted recovery of expenses, rather than impose a complete ban on settlement payments, because it was concerned that banning all settlement payments in connection with petitions to deny would seriously impede the monitoring and regulatory function of such petitions. The Commission essentially believed it would be inappropriate to ask the public to incur considerable out-of-pocket expenses in order to alert it to licensee deficiencies with no possibility of reimbursement. The Commission decided that the legitimate and prudent expense limitation would strike the appropriate balance between deterring abuse and not discouraging the filing of petitions to deny.

16. The Commission decided that different limitations for competing applications and petitions to deny were warranted because, among other things, different incentives were operative. Unlike petitioners, a competing applicant stands to gain a very valuable broadcast license. The inability to collect attorney's fees and expenses in settlements of competing applications does not prevent *bona fide* applicants from trying to obtain a license. In contrast, if the Commission were to prohibit petitioners from recovering fees and expenses, there would be an economic disincentive to file a petition to deny.

17. Finally, the Commission decided that its new policy of reviewing nonfinancial settlements, or citizens' agreements, on a case-by-case basis appropriately takes into account that concessions extracted from a licensee in citizens' agreements can be merely disguised payoffs for dismissing a renewal challenge. The Commission's rebuttable presumption, that any agreements that call for the petitioner to be paid for carrying out a programming or employment initiative are contrary to the public interest, recognizes that such arrangements are particularly susceptible to abuse. The Commission noted that this policy applies only to citizens' agreements reached in exchange for dismissing a petition to deny in the license renewal context and, therefore, it did not reach the question whether such agreements in other contexts provide the potential for abuse of Commission processes.

18. *Enforcement of Citizens' Agreements.* The Commission also determined that it would no longer enforce citizens' agreements containing licensee representations related to programming matters. As a result of its deregulatory initiatives, the Commission no longer applies a "promise versus performance" standard to renewal applications. Consequently, it found that promises regarding programming contained in citizens' agreements were, in general, no longer germane to the Commission's decision making process. The Commission noted that this change in policy would not apply to citizens' agreements regarding EEO or other nonprogram-related aspects of a station's operations.

19. *Cameron Policy.* Finally, the Commission eliminated the *Cameron* doctrine, a policy that allowed competing applicants in a comparative renewal proceeding to presume that they could acquire the incumbent licensee's transmitter site if they prevailed. It did so for a number of reasons. First, the *Cameron* presumption was permitting license renewal challengers, who were relying on an incumbent's transmitter in their application, to simply copy the incumbent's technical proposal. This in turn facilitated the filing of non *bonafide* applications, and operated unfairly to neutralize an advantage in the comparative hearing that an incumbent had earned. Further, the presumption was unrealistic because a site might truly be unavailable. Relying on this presumption potentially disserved the public because it allowed an applicant, that did not have an available site, to be granted a license. As a consequence, competing applicants can not rely upon this doctrine but must provide reasonable assurance of site availability.

Procedural Matters

20. The rule and policy changes in this "Report and Order" will become effective on June 28, 1989, subject to approval by the Office of Management and Budget. The policies will apply to all prospective competing applications and petitions to deny, as well as those applications and petitions that are on file with the Commission, but have not been designated for a hearing as of the effective date of the "Report and Order". The policies will not apply to any post-designation applications or petitions, or to any competing applications that have been settled and presented to the Commission for approval prior to the effective date. The *Cameron* policy change will apply to all prospective and pre-designation applications as of the effective date. Any pre-designation applicants that have relied on the *Cameron* presumption will have 30 days from the effective date of the "Report and Order" to supplement their application to show site availability.

21. In order to aid with the enforcement of the Commission's new settlement limitations, the Commission adopted a series of disclosure and certification requirements which are contained in §§ 73.3523 and 73.3524. These rules are set out in full in the Amendatory Text below. The Commission intends to enforce its policies and rules using the full panoply of penalties available against all persons who fail to comply.

22. *Final Regulatory Flexibility Act Analysis.* Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the adopted rules will not have a significant negative impact on a substantial number of small entities. The policy and rule changes will affect broadcast licensees who are seeking license renewal, applicants for construction permits for broadcast facilities that are mutually exclusive with facilities subject to license renewal, and persons or groups filing petitions to deny license renewals. The policy and rule changes implemented herein, which are intended to eliminate or reduce abuse of the Commission's license renewal process, should benefit all licensees, competing applicants and petitioners, including the small entities. The Commission has considered that limitations on settlements of petitions to

deny have the potential to discourage citizens' groups from filing petitions. The Commission believes that its legitimate and prudent expense limitation on settlements of petitions strikes the appropriate balance between the need to discourage abuse of its process without discouraging the filing of legitimate petitions to deny.

23. *Ordering Clauses.* Authority for the rule changes is contained in Sections 4 (i) and (j), 301, 303, 308 and 309 of the Communications Act of 1934, as amended.

24. Accordingly, *it is ordered*, That the policies and the amendments to the Commission's Rules and Regulations set forth in the Amendatory Text below shall become effective on June 28, 1989, subject to Office of Management and Budget approval.

25. *It is further ordered*, That the portions of this proceeding related to the renewal expectancy factor and the comparative renewal criteria (Parts III, IV and V of the "Second Further Notice") are held open pending further comment on these issues pursuant to a "Third Further Notice of Inquiry and Notice of Inquiry and Notice of Proposed Rule Making" in this proceeding.

26. *It is further ordered*, that the part of this proceeding related to amendments to FCC Form 301 (paragraphs 25–29 of the "Second Further Notice"), the policies related thereto, and the comments and reply comments received in response thereto are incorporated into General Docket No. 88–328. This proceeding has been resolved by a Report and Order adopted March 30, 1989. (54 FR 19951, May 9, 1989.)

27. *It is further ordered*, that, except as specified in Paragraphs 25–26 above, this proceeding is terminated.

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Amendatory Text

Part 73 of Title 47 of the Code of Federal Regulations is amended to read as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

2. Section 73.3523 is added to 47 CFR Part 73 to read as follows:

§ 73.3523 Dismissal of applications in renewal proceedings.

(a) Any applicant for a construction permit, that has filed an application that is mutually exclusive with an application for the renewal of a license of an AM, FM or television station (hereinafter "competing applicant"), and seeks to dismiss or withdraw its application and thereby remove a conflict between applications pending before the Commission, must obtain the approval of the Commission.

(b) If a competing applicant seeks to dismiss or withdraw its application prior to the Initial Decision stage of the hearing on its application, it must submit to the Commission a request for approval of the dismissal or withdrawal of its application, a copy of any written agreement related to the dismissal or withdrawal of its application, and an affidavit setting forth:

(1) A certification that neither the applicant nor its principals has received or will receive any money or other consideration in exchange for dismissing or withdrawing its application;

(2) A statement that its application was not filed for the purpose of reaching or carrying out an agreement with any other applicant regarding the dismissal or withdrawal of its application; and

(3) The terms of any oral agreement relating to the dismissal or withdrawal of its application.

In addition, within 5 days of the applicant's request for approval, each remaining competing applicant and the renewal applicant must submit an affidavit setting forth:

(4) A certification that neither the applicant nor its principals has paid or will pay any money or other consideration in exchange for the dismissal or withdrawal of the application; and

(5) The terms of any oral agreement relating to the dismissal or withdrawal of the application.

(c) If a competing applicant seeks to dismiss or withdraw its application after the Initial Decision stage of the hearing on its application, it must submit to the Commission a request for approval of the dismissal or withdrawal of its application, a copy of the any written agreement related to the dismissal or withdrawal, and an affidavit setting forth:

(1) A certification that neither the applicant nor its principals has received or will receive any money or other consideration in excess of the legitimate and prudent expenses of the applicant;

(2) The exact nature and amount of any consideration paid or promised;

(3) An itemized accounting of the expenses for which it seeks reimbursement;

(4) A statement that its application was not filed for the purpose of reaching or carrying out an agreement with any other applicant regarding the dismissal or withdrawal of its application; and

(5) The terms of any oral agreement relating to the dismissal or withdrawal of its application.

In addition, within 5 days of the applicant's request for approval, each remaining party to any written or oral agreement must submit an affidavit setting forth:

(6) A certification that neither the applicant nor its principals has paid or will pay money or other consideration in excess of the legitimate and prudent expenses of the withdrawing applicant in exchange for the dismissal or withdrawal of the application; and

(7) The terms of any oral agreement relating the dismissal or withdrawal of the application.

(d) For the purpose of this section:

(1) Affidavits filed pursuant to this section shall be executed by the applicant, permittee or licensee, if an individual; a partner having personal knowledge of the facts, if a partnership; or an officer having personal knowledge of the facts, if a corporation or association.

(2) An application shall be deemed to be pending before the Commission from the time an application is filed with Commission until an order of the Commission granting or denying the application is no longer subject to reconsideration by the Commission or to review by any court.

(3) "Legitimate and prudent expenses" are those expenses reasonably incurred by an applicant in preparing, filing, and prosecuting its application.

(4) "Other consideration" consists of financial concessions, including but not limited to the transfer of assets or the provision of tangible pecuniary benefit, as well as nonfinancial concessions that confer any type of benefit on the recipient.

3. Section 73.3524 is added to 47 CFR Part 73 to read as follows:

§ 73.3524 Dismissal of petitions to deny in renewal proceedings.

(a) Whenever a petition to deny has been filed against any application for the renewal of a license for an AM, FM, or television station, or against a construction permit application that is mutually exclusive with a renewal application, and the petitioner seeks to dismiss or withdraw the petition to deny, either unilaterally or in exchange for financial consideration, the petitioner must file with the Commission a request for approval of the dismissal or withdrawal, a copy of any written agreement related to the dismissal or

withdrawal, and an affidavit setting forth:

(1) A certification that neither the petitioner nor its principals has received or will receive any money or other consideration in excess of legitimate and prudent expenses in exchange for the dismissal or withdrawal of the petition to deny;

(2) The exact nature and amount of any consideration received or promised;

(3) An itemized accounting of the expenses for which it seeks reimbursement; and

(4) The terms of any oral agreement related to the dismissal or withdrawal of the petition to deny.

In addition, within 5 days of petitioner's request for approval, each remaining party to any written or oral agreement must submit an affidavit setting forth:

(5) A certification that neither the applicant nor its principals had paid or will pay money or other consideration in excess of the legitimate and prudent expenses of the petitioner in exchange for dismissing or withdrawing the petition to deny; and

(6) The terms of any oral agreement relating to the dismissal or withdrawal of the petition to deny.

(b) Citizens' agreements. Whenever a petition to deny has been filed against any application for the renewal of a license for an AM, FM, or television station, or against a construction permit application that is mutually exclusive with a renewal application, and the petitioner seeks to dismiss or withdraw the petition to deny in exchange for non-financial consideration (*e.g.*, programming, ascertainment or employment initiatives), this is referred to as a citizens' agreement. The parties to the agreement must file with the Commission a joint request for approval of the citizens' agreement, a copy of any written agreement, and an affidavit executed by each party setting forth:

(1) Certification that neither the petitioner, nor any person or organization related to the petitioner, has received or will receive any money or other consideration in connection with the citizens' agreement other than legitimate and prudent expenses incurred in prosecuting the petition to deny;

(2) Certification that neither the petitioner, nor any person or organization related to petitioner is or will be involved in carrying out, for a fee, any programming, ascertainment, employment or other non-financial initiative referred to in the citizens' agreement; and

(3) The terms of any oral agreement.

(c) For the purposes of this section:

(1) Affidavits filed pursuant to this section shall be executed by the applicant, permittee or licensee, if an individual; a partner having personal knowledge of the facts, if a partnership; or an officer having personal knowledge of the facts, if a corporation or association.

(2) A petition shall be deemed to be pending before the Commission from the time a petition is filed with the Commission until an order of the Commission granting or denying the petition is no longer subject to reconsideration by the Commission or to review by any court.

(3) "Legitimate and prudent expenses" are those expenses reasonably incurred by a petitioner in preparing, filing, and prosecuting its petition for which reimbursement is being sought.

(4) "Other consideration" consists of financial concessions, including but not limited to the transfer of assets or the provision of tangible pecuniary benefit, as well as non-financial concessions that confer any type of benefit on the recipient.

4. Section 73.3525 is amended by adding at the beginning of paragraph (a) the following:

§ 73.3525. Agreements for removing application conflicts.

(a) Except as provided in § 73.3523 regarding dismissal of applications in comparative renewal proceedings, whenever applicants * * *

* * * * *

5. Section 73.3568 is amended by revising the first sentence of paragraph (a) and the first sentence of paragraph (c) as follows:

§ 73.3568 Dismissal of applications.

(a) Subject to the provisions of § 73.3523 (Dismissal of applications in renewal proceedings) and § 73.3525 (Agreements for removing application conflicts), any application may, upon request of the applicant be dismissed without prejudice as a matter of right prior to the designation of such application for hearing. * * *

* * * * *

(c) Subject to the provisions of § 73.3523 (Dismissal of applications in renewal proceedings) and § 73.3525 (Agreements for removing application conflicts), requests to dismiss an application without prejudice after it has been designated for hearing will be considered only upon written petition properly served upon all parties of record. * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-12455 Filed 5-24-89; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 54, No. 100
Thursday, May 25, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Commodity Credit Corporation

7 CFR Parts 26 and 1427

Determination of World Price for Certain Commodities; Upland Cotton and Price Support and Production Adjustment Programs

AGENCY: Office of the Secretary and Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The purpose of this proposed rule is to amend the regulations found at: (1) 7 CFR Part 26 which set forth the formula which is used by the Secretary of Agriculture to determine and adjust the prevailing world market price for upland cotton; and (2) 7 CFR Part 1427 with regard to the administration of the upland cotton price support loan program. These actions are initiated in accordance with section 103A of the Agricultural Act of 1949, as amended, and the Commodity Credit Corporation Charter Act. Implementation of the changes made by this proposed rule will improve the effectiveness of the upland cotton program.

DATE: Comments must be received by June 26, 1989 in order to be assured of consideration.

ADDRESS: Mail comments to Bruce R. Weber, Director, Commodity Analysis Division, USDA–ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Leader, Fibers Group, Commodity Analysis Division, USDA–ASCS, Room 3758 South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447–7954.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "not major." It has been determiend that these provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local Government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the Federal Assistance Programs to which this proposed rule applies are: Commodity Loans and Purchases—10.051 and Cotton Production Stabilization—10.052 as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Analysis completed when 7 CFR Part 26 was originally added to the Code of Federal Regulations adequately covers the proposed amendments to 7 CFR Part 26. In addition, neither the Agricultural Stabilization and Conservation Service (ASCS) nor the Commodity Credit Corporation (CCC) is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of 7 CFR Part 1427. Therefore, a new Regulatory Flexibility Analysis has not been prepared.

It has been determined by an environmental evaluation that these actions will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

These programs/activities are not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Discussion of Changes

Statutory Background

Section 103A(a)(5)(E)(i) of the Agricultural Act of 1949, as amended (the "Act"), provides that the Secretary of Agriculture shall prescribe by regulation:

(i) A formula to define the prevailing world market price for cotton; and

(ii) A mechanism by which the Secretary shall announce periodically the prevailing world market price for cotton.

The Act also provides that the prevailing world market price for cotton shall be adjusted to United States quality and location (the "adjusted world price"). The regulations which set forth the formula used to determine the prevailing world market price for cotton, the mechanism for periodically announcing such prevailing world market price and the procedure for adjusting the prevailing world market price to United States quality and location are found at 7 CFR Part 26.

Despite recent amendments to the regulations governing the determination and adjustment of the prevailing world market price and changes in the administration of the marketing loan program, the prevailing world market price determined and adjusted pursuant to such regulations has not accurately reflected the prevailing world market price of upland cotton adjusted to United States quality and location. In order to improve the accuracy of such determinations and thereby increase the effectiveness of the upland cotton program, this proposed rule would permit the Secretary of Agriculture to make further adjustments in the prevailing world market price if it is determined, after a review of various factors, that such adjustment is necessary in order for the prevailing world market price to be adjusted to United States quality and location. Data to be considered in deciding whether to make further adjustments in the world market price include the following, as available: (1) U.S. prices for SLM 1 1/16 inch (micronaire 3.5 through 4.9) cotton as quoted in the designated U.S. spot markets relative to the formula-calculated adjusted world price; (2) price quotations for the U.S. Memphis territory and California/Arizona territory as quoted for M 1 3/32 inch cotton C.I.F. northern Europe relative to price quotations for other growths as quoted for M 1 3/32 inch cotton C.I.F. northern Europe; (3) the level of sales of U.S. cotton for export as reported in the weekly U.S. Export Sales report; and (4) other relevant data, including, but not limited to, a comparison of available actual sales prices for grades of cotton and quoted prices for such grades and the estimated volume of cotton available

for sale from competing foreign sellers of cotton.

In order to improve the competitiveness of U.S. cotton and the effectiveness of the upland cotton program, this proposed rule also would reinstate, beginning with the 1989-crop, the assessment and payment of interest and warehouse storage charges during the 8-month loan extension period and require that, as a condition of approving the loan extension, producers either prepay eight months' storage charges to the warehouseman or provide documentation from the warehouseman that CCC will not be held responsible for such storage charges. This requirement will facilitate the more timely movement of cotton into the market. This proposed rule also sets forth the procedure for repaying upland cotton price support loans that are not extended. These changes would be set forth at 7 CFR Part 1427.

Interested persons are invited to submit written comments on the proposed rule changes. Comments are specifically requested with respect to the factors to be taken into account in determining the need for and amount of the additional adjustment in the adjusted world price. Comments must be received by June 26, 1989 in order to be assured of consideration. The comment period is being limited to 30 days because producers and the entire cotton industry need to know all the detailed provisions of the 1989 upland cotton program as soon as possible.

List of Subjects

7 CFR Part 26

Upland cotton, World market price.

7 CFR Part 1427

Commodity Credit Corporation, Agriculture, packaging and containers, Price support programs, Assurity bonds, and Warehouses.

Proposed Rule

Accordingly, this proposed rule would amend the regulations found at Part 26 of Title 7, Subpart A and Part 1427 of Title 7 of the Code of Federal Regulations, as follows:

PART 26—[AMENDED]

1. The authority citation for Part 26, Subpart A, is revised to read as follows:

Authority: 7 U.S.C. 1444–1.

2. Section 26.3(a) is revised to read as follows:

§ 26.3 Adjusted world price for upland cotton.

(a) The prevailing world market price for upland cotton, adjusted in accordance with paragraph (b) of this section (hereinafter referred to as the "adjusted world price"), shall be applicable to the programs of the Department of Agriculture for the 1986 through 1990 crops of upland cotton as provided in section 103A of the Act.

3. The introductory text of § 26.3(b) is revised to read as follows:

§ 26.3 Adjusted world price for upland cotton.

* * * * *

(b) The adjusted world price for upland cotton shall equal the Northern Europe price as determined in accordance with § 26.2, adjusted as follows:

* * * * *

4. Section 26.3(b) is amended by adding a new paragraph (4) as follows:

§ 26.3 Adjusted world price for upland cotton.

* * * * *

(b) * * *

(4) If it is determined that the prevailing world market price as adjusted in accordance with paragraphs (b) (1) through (3) of this section does not accurately reflect the prevailing world market price of upland cotton adjusted to United States quality and location, such price may be adjusted on the basis of some or all of the following data, as available:

(i) The level of U.S. prices for SLM 1–1/16 inch (micronaire 3.5 through 4.9) as quoted in the designated U.S. spot markets relative to the adjusted world price as determined in accordance with paragraphs (b) (1) through (3) of this section;

(ii) The level of price quotations for the U.S. Memphis territory and California/Arizona territory as quoted for M 1$^{3}/_{32}$ inch cotton C.I.F. northern Europe relative to price quotations for other growths as quoted for M 1$^{3}/_{32}$ inch cotton C.I.F. northern Europe;

(iii) Weekly U.S. cotton export sales reports; and

(iv) Other data determined by the Secretary, or a designee of the Secretary, to be relevant in establishing an accurate prevailing world market price determination adjusted to United States quality and location. Such data includes, but is not limited to:

(A) A comparison of available actual prices received for grades of cotton and quoted prices for such grades; and

(B) The estimated volume of cotton available for sale from competing foreign sellers of cotton.

PART 1427—[AMENDED]

5. The authority citation for 7 CFR Part 1427 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423 and 1444–1; 15 U.S.C. 714b and 714c; and sec. 501 of Pub. L. 99–198.

6. Section 1427.7 is amended by redesignating paragraph (a) as paragraph (a)(1) and adding to the following new paragraph (a)(2) to read as follows:

§ 1427.7 Maturity of loans

(a) * * *

(2) Beginning with the 1989 crop of upland cotton, in order for a producer's price support loan to be extended for 8 months in accordance with paragraph (a) of this section, CCC must be provided with evidence that all storage costs for the 8–month period associated with the storage of the cotton pledged as collateral for such loan have been paid by or on behalf of the producer, or the storing warehouseman must execute an agreement with CCC which provides that such warehouseman will not hold CCC responsible for any storage or delivery costs associated with cotton pledged as collateral for such loan. In addition, if such loan is extended, the producer shall pay to CCC interest which will be assessed beginning with the first month of such extension.

* * * * *

7. Section 1427.22(a)(2) is amended by adding the following at the end thereof:

§ 1427.22 Repayment of loans.

(a) * * *

(2) * * *

Beginning with the 1989 crop of upland cotton, if a loan is repaid and such loan has not been extended in accordance with § 1427.7; the cotton pledged as collateral for such loan is not acquired by the producer through the use of commodity certificates in accordance with Part 1470 of this chapter; and the adjusted world price determined in accordance with 7 CFR Part 26 is:

(i) Below the loan rate for base quality (Strict Low Middling 1$^{1}/_{16}$ inch, micronaire 3.5 through 4.9) upland cotton, CCC will not require the payment of any interest which has accrued with respect to such loan and will pay all of the warehouse charges which have accrued with respect to the cotton pledged as collateral for such loan;

(ii) Above the base loan rate by less than the sum of the accrued interest and warehouse charges, CCC will not require the payment of that portion of the accrued interest and will pay that portion of the accrued warehouse charges that are determined to be necessary to permit the loan collateral

to be redeemed at the adjusted world price; or

(iii) Above the base loan rate by as much as or more than the sum of the accrued interest and warehouse charges, CCC will require the payment of all accrued interest and will not pay any of the accrued warehouse charges. In such case, the loan may be repaid at the loan rate plus accrued interest and any warehouse charges previously paid by CCC.

Signed at Washington, DC on May 19, 1989.

Clayton Yeutter,

Secretary of Agriculture.

[FR Doc. 89-12498 Filed 5-22-89; 1:24 p.m.]

BILLING CODE 3410-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-169-AD]

Airworthiness Directives; British Aerospace Model BAe 146-100A, -200A, and -300A Series Airplane; Reopening of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental Notice of Proposed Rulemaking (NPRM); Reopening of comment period.

SUMMARY: This notice proposes to amend an earlier proposed airworthiness directive (AD), applicable to British Aerospace Model BAe 146-100A, -200 series airplanes, that would have required modification of the aileron disconnect unit (ADU). This proposal would add Model BAe 146-300A series airplanes to the AD applicability, amend compliance times, require an additional ADU inspection, and require an additional modification of certain ADU's.

DATES: Comments must be recived no later than July 14, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-169-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing address: FAA Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-169-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168

Discussion

A proposal to amend Part 39 of the Federal Aviation Regulation which would have required modification of the aileron disconnect unit (ADU) on the British Aerospace Model BAe 146-100A and 200A series airplanes, was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on December 8, 1988 (53 FR 49557). That NPRM was prompted by reports of the ADU failing to cock and/or release when tested. This condition, if not corrected, could lead to loss of all roll control should a jam in the aileron flight control system occur. The comment period closed February 1, 1989.

Since the issuance of the NPRM, British Aerospace has issued Inspection Service Bulletin 27-87, dated September 30, 1988, which describes procedures to perform a functional test of the ADU to identify unserviceable mechanisms, and replacement of disconnect units, as necessary. British Aerospace has also issued Modification Service Bulletin 27-88-70212C, dated November 10, 1988, which describes procedures for modification of the aileron disconnect unit, Part No. 1295R000, and other part number ADU's modified to the Part No. 1295R000 configuration. The United Kingdom Civil Aviation Authority has classified both service bulletins as mandatory.

The single commenter to the proposal supported the rule, but noted that the latest revision of Bristish Aerospace Modification Service Bulletin 27-88-70212C includes an additional modification of the ADU, consisting of a modified washer added to assure correct operation of the aileron disconnect unit, as well as a change of the part number of the unit to 1295R000-5RM. The commenter recommended that this modification be included in the final rule. The FAA concurs that this modification, in accordance with the latest revision to the service bulletin, must be accomplished to preclude the unsafe condition addressed. Since this additional requirement would expand the scope of the proposed rule, the FAA has determine that it is necessary to revise the Notice accordingly and provide additional time for public comment.

Additionally, the commenter requested that the proposed 120-day compliance time be extended, since the time required for obtaining modification parts would be limited in that all unit modifications require completion by the manufacturer. After further review of the data related to this request, the FAA concurs that additional time for compliance is necessary. This Supplemental NPRM would require modification within one year after the effective date of the final rule.

The FAA has also determined that Model BAe 146-300A series airplanes are also subject to the unsafe condition addressed by this action. Therefore, the applicability statement in this Supplemental NPRM has been revised to include this model.

This Supplemental NPRM would also require, within 60 days, a functional test of the ADU to identify unserviceable mechanisms, and replacement of the disconnect units, if necessary, in accordance with British Aerospace Service Bulletin 27-87.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under

the provisions of § 21.29 of the Federal Aviation Administration and the applicable bilateral airworthiness agreement.

It is estimated that 58 additional airplanes of U.S. registry would be affected by this AD, it would take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost for the modifications is $100. The cost impact of the AD on U.S. operators is estimated to be $17,400.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($300). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising the Notice of Proposed Rulemaking, Docket 88-NM-169-AD, F.R. Doc. 88-28222, published in the **Federal Register** on December 8, 1988 (53 FR 49557), as follows:

British Aerospace: Applies to British Aerospace (BAe) Model 146-100A, -200A and -300A series airplanes certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent loss of roll control should a jam in the aileron control system occur, accomplish the following:

A. Within 60 days after the effective date of this AD:

1. Determine if Fraser Nash Part Number AO-100-902 aileron disconnect units (ADU's) or Normalair-Garrett LTD. (NGL) Part Number 1099R000, 1224R000, or 1295R000 ADU's are installed. If Fraser Nash Part Number AO-100-902 ADU's are installed, or if NGL ADU's modified to British Aerospace (BAe) modification HCM 70212C (NGL Modification No. 5RM) configuration are installed, no further action is required.

2. Modify NGL Part Number 1295R000 ADU's, and NGL Part Number 1099R000 or 1224R000 ADU's previosly modified to BAe HCM70212A&B (NGL modification 3RM and 4RM) configuration, to BAe modification HCM70212C (NGL modification 5RM) configuration in accordance with BAe Modification Service Bulletin 27-88-70212C, dated November 10, 1988.

3. Inspect NGL Part Number 1099R000 and 1224R000 ADU's for dormant failure in accordance with British Aerospace Inspection Service Bulletin 27-87, dated September 30, 1988. Replace any failed units with serviceable units prior to further flight.

B. Within one year after the effective date of this AD, for all airplanes equipped with NGL ADU's other than those specified in paragraph A.2. of this AD:

1. Modify NGL Part Number 1099R000 and 1224R000 ADU's to BAe HCM 70212A&B (NGL Modification 3RM and 4RM) and BAe 70212C (NGL Modification 5RM) configuration, in accordance with BAe Modification Service Bulletins 27-75-70212A&B, dated June 16, 1988, and 27-88-70212C, dated November 10, 1988.

Note.—British Aerospace Modification Service Bulletin 27-75-70212A&B refers to NGL Service Bulletins 1099R-27-4 and 1224R-27-5. British Aerospace Modification Service Bulletin 27-88-70212C refers to NGL Service Bulletin 1295R-27-6, Revision 1, and NGL Service News Letter, dated September 12, 1988, for specific installation procedures.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 15, 1989.

Leory A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-12501 Filed 5-24-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 71-CE-7-AD]

Airworthiness Directives; Cessna TU206, TP206, T207, and T210 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposed to amend Airworthiness Directive (AD) 71-09-07R1, Amendment 39-5445, applicable to certain Cessna TU206, TP206, T207, T210 through T210N series airplanes, which requires repetitive inspections and pressure tests of the exhaust manifold and cabin heat exchanger to detect cracks or leakage which could result in exhaust gases entering the cabin area. The proposed amendment provides a means to adjust the repetitive inspection intervals for those airplane covered by an FAA approved inspection program. This proposal is based on past AD inspection evaluations where the repetitive inspection intervals were adjusted on an individual basis without affecting safety.

DATES: Comments must be received on or before June 26, 1989.

ADDRESSES: Cessna Single Engine Service Letter SE71-11, dated April 16, 1971, applicable to this AD may be obtained from Cessna Aircraft Company, Piston Aircraft Marketing Division, Post Office Box 1521, Wichita, Kansas 67201. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the Federal Aviation Administration, Central Region, Office of the Assistant Chief

Counsel, Attention: Rules Docket No. 71–CE–7–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Victor Powell, Wichita Aircraft Certification Office, ACE–190W, Mid-Continent Airport, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946–4440.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested person are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submittted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 71–CE–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

On May 4, 1971, the FAA issued AD 71–09–07, Amendment 39–1202 (36 FR 8209) to require inspections and pressure testing of the complete exhaust manifold in the cabin heat exchanger area of various turbocharged Cessna TU206, TP206, T207, and T210 series airplanes to detect exhaust system cracks that could allow exhaust gas leakage into the cabin. After issuing AD 71–09–07R1, which requires repetitive crack inspections every 50 hours on the exhaust manifold heat exchanger, the FAA determined that the inspection interval can be adjusted based on certain factors. These factors include past successful AD inspections and FAA approved manufacturers progressive inspection programs. In one case, the inspection program consists of a 200–hour cycle divided in 4 inspections occuring at 50-hour intervals. The inspections may be conducted up to 10 hours ahead of schedule, or 10 hours after the scheduled interval, to allow scheduling flexibility. Therefore, a proposal has been developed to perform the repetitive inspections required by AD 71–09–07R1, Amendment 39–5445, concurrent with the scheduled 50-hour inspection intervals so that in the event 60 to 70 hours occur between inspections, the airplane will remain in compliance with the requirements of AD 71–09–07R1.

After several evaluations on the effect that an adjusted inspection schedule would have on the airworthiness of the airplane involved, the level of safety was determined to not be significantly reduced by this action. To this effect, inspection interval extensions have been granted on an individual basis to several requestors over the years since the AD was issued. This proposed amendment would revise AD 71–09–07R1, Amendment 39–5445, by allowing the inspection intervals to be adjusted to coincide with FAA approved scheduled inspection program intervals.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The FAA has determined that cost of compliance with this proposed regulation is negligible and therefore will not have a significant financial impact on any entities operating these airplanes.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES".**

List of Subjects in 14 CFR Part 39

Air transportaiton, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising and reissuing AD 71–09–07R1, Amendment 39–5445, as follows:

Cessna: Applies to turbocharged TU206, TP206, and T207 Series (all serial numbers), and Models T210 thru T210N (Serial Numbers T210–0001 through T210–0454, and 21059200 through 21064897) airplanes certificated in any category.

Compliance: Required as indicated in the body of the AD unless accomplished in accordance with AD 71–09–07R1.

To prevent exhaust gases from entering the cabin, accomplish the following:

(a) Within the next 25 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished within the last 25 hours TIS, and thereafter at intervals not to exceed 50 hours TIS since the last inspection per this AD prior to its revision, inspect the exhaust manifold heat exchanger in accordance with the following:

(1) Test the complete exhaust manifold in the cabin heat exchanger area for cracks in accordance with the following procedures, or the more detailed procedures, outlined in the Cessna Service Manuals for the specified airplanes.

(i) Remove the heater shroud so that all surfaces of the exhaust manifold heat exchanger are exposed.

(ii) Attach the pressure side of an industrial vacuum cleaner to the tailpipe opening, using a rubber plug to effect a seal as required.

(iii) With vacuum cleaner operating, check the complete exhaust manifold in the heat exchanger area manually by feel or by using a soap solution and watching for bubbles. The exhaust manifold in the heat exchanger area must be free of air leaks.

(2) If cracks, breaks, or any leakage along the exhaust manifold cabin heat exchanger are found during the pressure test required by paragraph (a)(1) of this AD, prior to further flight replace the defective part with an airworthy part.

Note.—Cessna Service Letter SE71–11, dated April 16, 1971, covers this same subject.

(b) For airplanes covered by an FAA approved inspection program, the intervals between the repetitive inspections specified in this AD may be adjusted up to a maximum of 70 hours TIS between inspections.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Mid-Continent Airport, Whicita, Kansas 67209.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Cessna Aircraft Company, Piston Aircraft Marketing Division, Post Office Box 1521, Whicita, Kansas 67201; or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment revises AD 71-09-07R1, Amendment 39-5445.

Issued in Kansas City, Missouri, on May 12, 1989.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-12503 Filed 5-24-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-44-AD]

Airworthiness Directives; Honeywell, Inc., Sperry FM-800 Flight Management System (FMS) Navigation Computers, as Installed in, but Not Limited to, Avions Marcel Dassault Model Mystere-Falcon 900, British Aerospace Model BAe 125-800A, Canadair Model CL-601, and Gulfstream Model G-IV Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to any aircraft equipped with certain Honeywell, Inc., Sperry FMZ-800 Flight Management System (FMS) navigation computers using triple inertial reference systems (IRS) as navigation sensors, which currently requires operation of the third IRS in the attitude mode on entire flights when intending to cross the 180 degree meridian. The existing AD also currently offers an optional terminating action, which allows removal of the requirement to operate the third IRS in the attitude mode if the deficient FMS navigation computers are replaced with specified computers. This action would require accomplishment of the terminating action, which is now optional, and expand the applicability of the AD to all aircraft with the specified deficient computers, regardless of the number of IRS's used. This action is prompted by the potential of error in operation of the third IRS in the attitude mode, erroneous replacement of the specified FMS computers with deficient FMS computers, and erroneous installation of third IRS in combination with deficient FMS computers. This condition, if not corrected, could result in aircraft navigation outside the assigned airspace.

DATES: Comments must be received no later than July 14, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-44-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. There is no applicable service information.

FOR FURTHER INFORMATION CONTACT: Mr. Herb Peters, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5353.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-44-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On January 4, 1989, the FAA issued AD 89-02-10, Amendment 39-6116 (54 FR 1344; January 13, 1989), applicable to airplanes equipped with certain Honeywell, Inc., Sperry FM-800 Flight Management System (FMS) Navigation Computers, to require that the third IRS be operated in the attitude mode on flights intending to cross the 180 degree meridian, if the aircraft is equipped with the certain deficient FMS navigation computers and triple IRS's. That AD also provided an optional terminating action, which, if installed, allowed the third IRS to be operated in the navigation mode on all flights, including those with an intended crossing of the 180 degree meridian, if the deficient FMS navigation computers were replaced with other specified navigation computers.

That action was prompted by an incident where an operator, whose aircraft was equipped with certain dual Honeywell, Inc., Sperry FM-800 FMS navigation computers and triple IRS's, reported an FMS indicated position jump after crossing the 180 degree meridian. Such an FMS position jump, if not corrected, could cause the aircraft to be navigated outside its assigned airspace.

AD-89-02-10 was issued to provide an iterim basis upon which airplanes with the deficient computers could continue to operate. At the time of the issuance of that AD, the FAA was concerned with, and still is concerned with, the aircraft's vulnerability to the navigation position jump as a result of certain errors. The errors considered likely are: (a) An operational error of not selecting the third IRS to the attitude mode for a 180 degree meridian crossing; (b) after use of the optional terminating action, a maintenance error by replacing specified FMS computers with deficient computers, and not reimposing the required operating limitation; and (c) an installation error by adding a third IRS to an installation already using deficient computers.

Honeywell, Inc., has established an FMS navigation computer modification and reidentification program, which includes computer component changes, retesting and reidentification. The FAA has reviewed this program and found it to be acceptable in correcting the unsafe condition addressed by this AD action.

Since the position jump remains possible because of likely errors, an AD

is proposed which would revise AD 89-02-10 to: (1) Require accomplishment of the terminating action, which is now optional, and which is applicable to any aircraft with the deficient FMS computers and three IRS's by requiring replacement of the deficient computers with specified computers; and (2) require replacement of the deficient FMS computers with specified computers on all aircraft, regardless of the number of IRS's used.

There are approximately 34 Avian Marcel Dassault Mystere-Falcon 900 series airplanes, 1 British Aerospace Model BAe-125-800A series airplane, 27 Canadair Model CL-601 series airplanes, and 59 Gulfstream Model G-IV series airplanes in the worldwide fleet that are or have been equipped with the subject FMS navigation computers. It is estimated that 20 airplanes of U.S. registry would be affected by this AD, that it would take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Honeywell has offered to accomplish these changes and test procedures without cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,200.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by revising AD 89-02-10, Amendment 39-6116 (54 FR 1344; January 13, 1989), as follows:

Honeywell, Inc.: Applies to Sperry FMZ-800 Flight Management System (FMS) navigation computers, part number 7004402-801, -811, or -832. These FMS computers are known to have been installed in, but are not limited to, Avions Marcel Dassault Model Mystere-Falcon 900 series airplanes, British Aerospace Model BAe-125-800A series airplanes, Canadair Model CL-601 series airplane, and Gulfstream Model G-IV series airplanes. Compliance is required as indicated, unless previously accomplished.

To prevent FMS position jumps while crossing the 180 degree meridian, accomplish the following:

A. Within 15 days after February 6, 1989 (the effective date of Amendment 39-6116), on aircraft equipped with three inertial reference systems (IRS), add the following to the Limitations Section of the FAA-approved Flight Manual (AMF), or FAA-approved Flight Manual Supplement (AFMS). This may be accomplished by inserting a copy of this AD in the AFM or AFMS:

IF FLIGHT ACROSS THE 180 DEGREE MERIDIAN IS INTENDED, THE THIRD INERTIAL REFERENCE SYSTEM MUST BE OPERATED IN THE "ATT" MODE.

B. Within 60 days of the effective date of this amendment, regardless of the number of IRS's installed, replace the FMS navigation computers, as follows:

1. Replace Honeywell P/N 7004402-801 (software configuration DEL-8N) computers with P/N 7004402-803 (software configuration DEL-10J) -804, -806, or -906 (software configuration NZ-8804) computers.

2. Replace Honeywell P/N 7004402-811 (software configuration DEL-9S) computers with P/N 7004402-813 or -903 (software configuration DEL-10P) computers.

3. Replace Honeywell P/N 7004402-832 (software configuration DEL-9T) computers with P/N 7004402-833 or -904 (software configuration NZ-8801) computers.

After these replacements have been accomplished on those aircraft with three IRS's, the AFM or AFMS limitation, required by paragraph A. above, may be removed, and the third IRS may be operated normally.

C. An alternate means of compliance or adjustment of the compliance time, which provide an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or commend and then send it to the Manager, Los Angeles Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Seattle, Washington, on May 15, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-12502 Filed 5-24-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-65-AD]

Airworthiness Directives. SAAB-Scania Model SF-340A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain SAAB-Scania Model SF-340A series airplanes, which would require. modification of the emergy lighting activation circuit. This proposal is prompted by reports that the emergency lighting system will not illuminate automatically if normal airplane power is lost. This condition, if not corrected, could result in failure of the emergency lights to operate when required in an emergency situation

DATES: Comments must be received no later than July 14, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-65-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from SAAB-Scania Aircraft Division, Product Support S-581 88, Linkoping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplanes Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway

South, C-68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Available of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-65-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion:

The Luftfartsverket (LFV), which is the airworthiness authority of Sweden, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on the SAAB Model SF-340A series airplanes. There have been reports that the current emergency lighting system on SAAB Model SF-340A series airplanes will not illuminate automatically when aircraft engine generated power is lost, and the right battery system remains operative. This condition, if not corrected, could result in failure of the emergency lights to operate when required in an emergency situation.

SAAB/Scania has issued Service Bulletin SF340-33-028, Revision 1, dated January 26, 1989, which describes procedures for modification of the emergency lighting activation circuit to ensure the system will activate automatically when normal power (i.e. generated power) is lost. The LFV has classified this service bulletin as mandatory and has issued Swedish Airworthiness Directive (SAD) No. 1-030 addressing this same subject.

This airplane model is manufactured in Sweden and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require modification of the emergency lighting activation circuit in accordance with the service bulletin previously described.

It is estimated that 79 airplanes of U.S. registry would be affected by this AD, that it would take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The modification kit will be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $25,280.

The regulations proposed herein would not have substantial direct effects on the Sates, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($320). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

SAAB-Scania: Applies to Model SF-340A series airplanes, Serial Numbers -004 through -159, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure the operation of the emergency lighting system when required during an emergency situation, accomplish the following:

A. Within 60 days after the effective date of this AD, modify the emergency lighting activation circuit in accordance with SAAB Service Bulletin, SF340-33-028, Revision 1, dated January 26, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to SAAB-Scania Aircraft Division, Product Support, S-581 88, Linkoping, Sweden. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 15, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-12504 Filed 5-24-89; 8:45 am]

BILLING CODE 4910-13-M

Coast Guard

46 CFR Parts 170, 171, 173, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184 and 185

Small Passenger Vessel Inspection and Certification; Rescheduling of Public Hearing

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule; notice of public hearing change.

SUMMARY: On 26 April, 1989 the Coast Guard published in the **Federal Register** (54 FR 17997) notice of six hearings which would be held on this proposed rulemaking. The Boston hearing was to be held at the Boston Marine Society. Since that time it has become clear that more people will attend than can be comfortably accommodated at the originally scheduled meeting space. Accordingly, the location of the meeting is being Changed to the Coast Guard Support Center.

DATE: The Boston Public Hearing will be held on June 23, 1989 beginning at 10:00 and ending at 5:00 p.m. or as soon as all the speakers have been heard.

ADDRESS: The hearing location is at the All Hands Club, Coast Guard Support Center, 427 Commercial Street, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: LCDR William P. Cummins (202) 267–1181.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate. Those wishing to make an oral statement are requested to register by calling the Executive Secretary of the Marine Safety Council at (202) 267–1477 at least two days prior to the hearing.

Dated: May 19, 1989.

J. D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89–12452 Filed 5–24–89; 8:45 am]

BILLING CODE 4910–14–M

Notices

Federal Register
Vol. 54, No. 100
Thursday, May 25, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[CS-89-001]

Program Continuation; Grants and Cooperative Agreements; Federal-State Marketing Improvement Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice inviting applications for Fiscal Year 1989 Grant Funds under the Federal-State Marketing Improvement Program. (FSMIP)

SUMMARY: Notice is hereby given that the Federal-State Marketing Improvement Program was allocated $942,000 in the Federal Budget for Fiscal Year 1989. Funds remain available for this program. States interested in obtaining funds under the program are invited to submit proposals for marketing studies.

DATE: Applications will be accepted until September 1989.Q02

ADDRESS: Proposals may be sent to Dr. Harold S. Ricker, Deputy Director for Marketing Research, Commodities Scientific Support Division, AMS, USDA, Room 3522-South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Dr. Harold S. Ricker, (202, 447-2704).

SUPPLEMENTARY INFORMATION: The Federal-State Marketing Improvement Program is authorized under section 204(b) of the Agricultural Marketing Act of 1946. The program is a matching fund program designed to assist State Departments of Agriculture in conducting feasibility studies related to the marketing of agricultural products. Organizations interested in conducting a marketing study should contact their State Department of Agriculture Marketing Division to discuss their proposal. Mutually acceptable proposals must be submitted through the State Office and be accompanied by a completed SF 424 and detailed budget statement. FSMIP funds may not be used for advertising or the purchase of equipment and facilities. Guidelines may be obtained from your State Departments of Agriculture or the above AMS contact.

In terms of objectives, the States are encouraged to: (1) Study adapting the marketing system for changes in production and consumer preferences; (2) study ways of improving the efficiency of the marketing system to enhance competitiveness and profitability. Proposals addressing other marketing objectives will also receive consideration.

The Federal-State Marketing Improvement Program is listed in the "Catalog of Federal Domestic Assistance" under No. 10.156 and subject agencies must adhere to Title VI of the Civil Rights Act of 1964 which bars discrimination in all Federally-assisted programs.

Done at Washington, DC this 19th day of May 1989.

J. Patrick Boyle,
Administrator.

[FR Doc. 89-12495 Filed 5-24-89; 8:45 am]
BILLING CODE 3410-02-M

Forest Service

North Slope Timber Sale, Dixie National Forest, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service is gathering information in order to prepare an Environmental Impact Statement (EIS) for a proposal to harvest timber and build roads in the north slope area of Boulder Mountain. The area is located approximately five and one-half air miles southeast of Teasdale, Utah. Part of the proposed timber harvest and road construction is within the "Boulder Mountain/Boulder Top/Deer Lake Roadless Area," Number 07040. The management activities would be administered by the Teasdale Ranger District of the Dixie National Forest in Wayne County, Utah.

This EIS will tier to the Forest Plan (September 1986) which provides overall guidance (Goals, Objectives, Standards and Guidelines and Management Area direction) in achieving the desired future condition for this area. The purpose and goal for the proposed action is to achieve the management needs of the forest resources and provide a sustained timber yield that is responsive to local industry and national needs.

The Forest Service is seeking information and comments from Federal, State and local agencies, organizatons and individuals who may be interested in or affected by the proposed action. This input will be used in preparing the Draft EIS.

DATE: Comments concerning the proposed action and scope of the analysis must be received by July 1, 1989.

ADDRESS: Submit written comments to: District Ranger, Teasdale Ranger District, Box 99, Teasdale, Utah 84773.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to William C. Hipp, Timber Management Assistant, Teasdale Ranger District, Box 99, Teasdale, Utah 84773. Phone (801) 425-3702.

SUPPLEMENTARY INFORMATION: Management activities under consideration would occur in an area encompassing approximately 1,650 acres of National Forest lands on the Teasdale Ranger District, Wayne County, State of Utah.

The Forest Plan provides the overall guidance for management activities in the potentially affected area through its Goals, Objectives, Standards and Guidelines, and Management Area direction. The potentially affected area involves the following Management Areas:

Management Area 7A—Wood Production and Utilization: The majority of the proposal is in this management area.

Desired Future Conditions. (1) Create and maintain nearly equal areas in seedlings and saplings, poletimber, immature sawtimber and mature sawtimber. (2) Create and maintain stand conditions that will minimize growth loss and mortality from insects and disease. (3) Convert slow growing stands of mature sawtimber (beyond culmination of mean annual increment for the product size objective) to young thrifty stands of desirable species.

Management Area 2A—Semiprimitive Recreation: A very small portion of this management area is involved.

Desired Future Conditons. This area will provide the user with a moderate to high probability to experience isolation from the sights and sounds of human, independence, closeness to nature, tranquility and self reliance through the application of woodsman and outdoor skills in an environment that offers challenge and risk. This opportunity exists for users to have a high degree of interaction with the natural environment.

Management Area 9A—Riparian Management. This management area lies along Spring Branch that flows through a portion of the proposed project area.

Desired Future Conditions. Riparian area acreage remains essentially the same as currently exists. Riparian ecosystem remains healthy and viable. Sufficient habitat remains to support at least minimum viable populations of riparian dependent wildlife species. Water quality is not impaired below existing levels and is improved in some areas. Stream channel stability is maintained or, in areas where it is severely degraded, is improved to at least minimally acceptable standards. Area provides multiple resource outputs while providing protection to riparian dependent values.

A reasonable range of alternatives will be considered. One of these will be the "No Action" alternative where no timber harvest or road construction will occur. However, current management will continue which includes the maintenance of water control structures for irrigation needs and the roads associated with them. Other alternatives will examine timber harvest and road building in various locations and intensities to achieve management goals.

The Forest Service will analyze and document the direct, indirect and cumulative effects of the alternatives. This will include an analysis of the effects of the alternatives on the roadless character of the affected area, even though existing roads appear to have subdivided the area into areas of less than 5,000 acres. The EIS will also include site specific mitigation measures.

Public participation is important during the analysis. Comments received during earlier scoping will be incorporated in the draft EIS. However, Federal, State and local agencies, potential users of the area, and other individuals or organizations who may be interested in or affected by the decision are welcome and invited to participated in this extended scoping by submitting new or additional comments by July 1, 1989.

The comment period on the draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register.** It is very important that those interested in this proposal participate at this time. To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act of 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS (*Wisconsin Heritages Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

The Draft Environmental Impact Statement (DEIS) is expected to be available for public review in August 1989. After a 45 day public comment period the comments received will be analyzed and considered by the Forest Service in preparing the Final Environmental Impact Statement (FEIS). The FEIS is scheduled to be completed by October 1989. In the FEIS, The Forest Service will respond to comments received. The Forest Supervisor, who is the responsible official, will make a decision regarding this proposal, considering the comments and responses, environmental consequences discussed in the FEIS and applicable laws, regulations and policies. The decision and reasons for the decision will be documented in a Record of Decision.

Hugh C. Thompson, Forest Supervisor, Dixie National Forest, is the responsible official.

Date: May 19, 1989.

Hugh C. Thompson,

Forest Supervisor.

[FR Doc. 89–12540 Filed 5–24–89; 8:45 am]

BILLING CODE 3410–11–M

Strawberry Ridge Timber Sale, Dixie National Forest, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) for a proposal to harvest timber and build roads in the Strawberry Ridge area. The area is located approximately 30 air miles southeast of Cedar City, Utah. The management activities would be administered by the Cedar City Ranger District of the Dixie National Forest in Kane County, Utah.

The EIS will tier to the Land and Resource Management Plan (September, 1986) which provides the guidance for all natural resource management activities and establishes management standards and guidelines for the Dixie National Forest. The purpose and goal for the proposed action is to achieve the management needs of the forest resources and provide a sustained timber yield that is responsive to local industry and national needs.

The Forest Service is seeking information and comments from Federal, State and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparing the Draft EIS.

DATE: Comments concerning the proposed action and scope of the analysis must be received by July 1, 1989.

ADDRESS: Submit written comments to: District Ranger, Cedar City Ranger District, P.O. Box 627, Cedar City, UT 84721–0627.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Vern H. Roundy, Timber Management Assistant, Cedar City Ranger District, P.O. Box 627, Cedar City, UT 84721–0627. Phone: (801) 586–4462.

SUPPLEMENTARY INFORMATION: Management activities under consideration would occur in an area encompassing approximately 220 acres of National Forest system lands. Previous logging has occurred over most of the area and the majority of the transportation system is in place. Since earlier logging, private lands adjacent to the proposed project area have been subdivided and numerous residences have been constructed.

The Forest Plan provides the overall guidance for management activities in

the potentially affected area specifying the goals and objectives, desired future condition, management area direction and standards and guidelines. The potentially affected area involves the following Management Areas:

Management Area 7A—Wood Production and Utilization: The majority of the proposal is in this management area.

Desired Future Conditions. (1) Create and maintain nearly equal area in seedlings and saplings, poletimber, immature sawtimber and mature sawtimber. (2) Create and maintain stand conditions that will minimize growth loss and mortality from insects and disease. (3) Convert slow growing stands of mature sawtimber (beyond culmination of mean annual increment for the product size objective) to young thrifty stands of desirable species.

Management Area 2B—Roaded Natural Recreation: This management area lies along State Route 14 and involves only a small area.

Desired Future Conditions. This area is characterized by a modified natural environment. Resource modification and utilization practices usually harmonize with the natural environment. In some of the more modified zones within this area utilization practices enhance recreation activities, maintain vegetative cover, and soil. The opportunity to have a high degree of interaction with the natural environment and face challenges associated with more primitive forms of recreation will not be important. Both motorized and non-motorized forms of recreation are possible in this area. The natural features of the landscape will dominate.

A reasonable range of alternatives will be considered. One of these will be the "no action" alternative in which no timber harvesting or associated road work would occur. However, current management will continue which includes a small sales program involving sawtimber, posts, poles and ornamentals; and dispersed recreation in the form of recreation vehicle travel, hunting, fuelwood gathering and snowmobiling. Other alternatives will examine road construction and maintenance activities and various cutting methods and timber management intensities to achieve coordination and integrated management goals. The Forest Service will analyze and document the direct, indirect and cumulative environmental effects of the alternatives. The EIS will also include site specific mitigation measures.

Public participation is important during the analysis. During preliminary scoping, considerable public interest was expressed, resulting in the decision to prepare an Environmental Impact Statement. Comments received during earlier scoping will be incorporated in the draft EIS. However, Federal, State and local agencies, potential users of the area, and other individuals or organizations who may be interested in or affected by the decision are welcome and invited to participate in this extended scoping process by submitting new or additional comments by July 1, 1989.

The comment period on the draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposal participate at this time. To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act of 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions (Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS (Wisconsin Heritages Inc., v. Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1989)). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

The Draft Environmental Impact Statement (DEIS) is expected to be available for public review in August 1989. After a 45 day public comment period, the comments received will be analyzed and considered by the Forest Service in preparing the Final Environmental Impact Statement (FEIS). The Final Environmental Impact Statement is scheduled to be completed by October 1989. In the FEIS, the Forest Service will respond to the comments received. The Forest Supervisor, who is the responsible official, will make a decision regarding this proposal, considering the comments and responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

Hugh C. Thompson, Forest Supervisor, Dixie National Forest is the responsible official.

Date: May 19, 1989.

Hugh C. Thompson,

Forest Supervisor.

[FR Doc. 89-12541 Filed 5-24-89; 8:45 am

BILLING CODE 3410-11-M

Delegation of Authority to Forest Supervisors; Tonto and Apache-Sitgreaves National Forests

AGENCY: Forest Service, USDA.

ACTION: Notice; delegation of authority.

SUMMARY: The Southwestern Region of the Forest Service hereby gives notice of the delegation of authority by the Regional Forester to selected Forest Supervisors to perform certain transactions related to the granting and terminating of easements on National Forest System lands.

EFFECTIVE DATE: This policy was effective December 8, 1988.

FOR FURTHER INFORMATION CONTACT: Questions about this policy should be addressed to Arthur S. Maynard, Recreation, Land Uses Staff, Forest Service, USDA, 517 Gold Avenue, SW., Room 5315, Albuquerque, New Mexico 87102 (505) 842-3444.

SUPPLEMENTARY INFORMATION: Pursuant to 36 CFR 2512.52 and the delegation of authority from the Chief of the Forest Service set forth in Forest Service Manual section 2732.04 and 2733.04b, the Regional Forester for the Southwestern Region has determined that certain National Forests have sufficient lands staff expertise to permit the delegation of authority to Forest Supervisors of those forests to:

1. Grant easements to public road agencies under the authority of the National Forest Road and Trails Act of October 13, 1964, (78 Stat. 1089; 16 U.S.C. 533) and to terminate such easements with the consent of the grantee.

2. Issue easements and reservations for construction and use of roads, execute stipulations, and terminate such easements on the occurrence of a fixed or agreed upon condition, event, or time when the easement, by its terms, provides for such termination, pursuant to the Federal Land Policy and Management Act of October 21, 1976, (90 Stat. 2743; 43 U.S.C. 1715).

This authority has been delegated to the Forest Supervisors of the following National Forests: Apache-Sitgreaves and Tonto by Region 3 Interim Directive # 5 dated December 8, 1988, to Forest Service Manual Chapter 2730—Road and Trail Right-of-Way Grants.

Date: May 12, 1989.

R. Forrest Carpenter,

Deputy Regional Forester.

[FR Doc. 89–12544 Filed 5–24–89; 8:45 am]

BILLING CODE 3410–11–M

ARCTIC RESEARCH COMMISSION

Meeting

Notice is hereby given that the United States Arctic Research Commission will hold its 18th Meeting in Anchorage, AK, on June 27, 1989. The meeting will start at 8:30 a.m. in the Anchorage Historical and Fine Arts Museum, 7th and A Streets. Agenda items include: (1) Chairman's Report; (2) Consideration of Improvements to the Environmental Impact Statement Process; (3) Comments from the Interagency Arctic Research Policy Committee; (4) Comments from the Alaska Congressional Delegation; (5) Comments from the Alaska Governor's Office; (6) Consideration of a recommendation on Engineering Research; (7) Status of Commission recommendations; (8) Discussion of Commission options regarding the Environmental Impact Statement Process; (9) Approval of Guidelines for the Conduct of Research in the Arctic; and (10) Status of a Commission brochure.

From 4:00 p.m. until 5:00 p.m. on June 27, 1989 the Commission will meet in Executive Session to discuss (1) Additions to the Group of Advisors; and (2) Adoption of the Commission budget for FY 1990.

Contact Person for More Information: Philip L. Johnson, Executive Director, U.S. Arctic Research Commission (202) 371–9631.

Philip L. Johnson,

Executive Director, U.S. Arctic Research Commission.

[FR Doc. 89–12537 Filed 5–24–89; 8:45 am]

BILLING CODE 7555–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

North Shore University Hospital et al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 89–004. *Applicant:* North Shore University Hospital, Manhasset, NY 11030. *Instrument:* Electron Microscope, Model JEM–100CX. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 53 FR 46106, November 16, 1988. *Instrument Ordered:* July 11, 1988.

Docket Number: 89–006. *Applicant:* Louisiana State University Medical Center, Shreveport, LA 71130–3932. *Instrument:* Electron Microscope, Model CM 10. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* See notice at 53 FR 46106, November 16, 1988. *Instrument Ordered:* September 13, 1988.

Docket Number: 89–011. *Applicant:* California Department of Food and Agriculture, Sacramento, CA 94271–0001. *Instrument:* Electron Microscope, Model EM 902. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* See notice at 53 FR 51576, December 22, 1988. *Instrument Ordered:* September 29, 1988.

Docket Number: 89–013. *Applicant:* Northern Arizona University, Flagstaff, AZ 86011. *Instrument:* Electron Microscope, Model JEM–1200EX II. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 53 FR 51576, December 22, 1988. *Instrument Ordered:* September 1, 1988.

Docket Number: 89–014. *Applicant:* Massachusetts Institute of Technology, Cambridge, MA 02139. *Instrument:* Electron Microscope, Model JEM–1200EX/SEG/DP/DP. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 53 FR 51576, December 22, 1988. *Instrument Ordered:* July 18, 1988.

Docket Number: 89–015. *Applicant:* University of California at Berkeley, Berkeley, CA 94720. *Instrument:* Electron Microscope, Model JEM–1200EX. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 53 FR 3635, January 25, 1989. *Instrument Ordered:* August 10, 1988.

Docket Number: 89–016. *Applicant:* Louisiana State University, New Orleans, LA 70112. *Instrument:* Electron Microscope, Model CM–10/PC. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* See notice at 53 FR 3635, January 25, 1989. *Instrument Ordered:* August 29, 1988.

Docket Number: 89–017. *Applicant:* Tulane University, Covington, LA 70433. *Instrument:* Electron Microscope, Model JEM–1200EX/SEG/DP/DP. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 53 FR 3636, January 25, 1989. *Instrument Ordered:* August 29, 1988.

Docket Number: 89–018. *Applicant:* National Institute for Occupational Safety and Health, Cincinnati, OH 45226. *Instrument:* Electron Microscope, Model JEM–100CXII. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 53 FR 3636, January 25, 1989. *Instrument Ordered:* June 27, 1988.

Docket Number: 89–020. *Applicant:* Tulane University, Salt Lake City, UT 84112. *Instrument:* Electron Microscope, Model H–600–3. *Manufacturer:* Hitachi Scientific Instruments, Japan. *Intended Use:* See notice at 53 FR 3636, January 25, 1989. *Instrument Ordered:* September 8, 1988.

Docket Number: 89–024. *Applicant:* Medical University of South Carolina, Charleston, SC 29425. *Instrument:* Electron Microscope, Model H–7000. *Manufacturer:* Hitachi Scientific Instruments, Japan. *Intended Use:* See notice at 53 FR 4874, January 31, 1989. *Instrument Ordered:* July 24, 1988.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89–12473 Filed 5–24–89; 8:45 am]

BILLING CODE 3510–DS–M

Rutgers University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88-308. *Applicant:* Rutgers University, Piscataway, NJ 08855-6999. *Instrument:* Spectrasan Accessory to Stopped-Flow Instrument, Model MG-3000. *Manufacturer:* Hi-Tech Scientific, LTD., United Kingdom. *Intended Use:* See notice at 53 FR 43465, October 27, 1988.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* This is a compatible accessory for an instrument previously imported for the use of the applicant. The instrument and accessory were made by the same manufacturer. The National Institutes of Health advises in its memorandum dated January 26, 1989 that the accessory is pertinent to the intended uses and that it knows of no comparable domestic accessory.

We know of no domestic accessory which can be readily adapted to the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-12474 Filed 5-24-89; 8:45 am]

BILLING CODE 3510-DS-M

Scripps Clinic and Research Foundation; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88-309. *Applicant:* Scripps Clinic and Research Foundation, La Jolla, Ca 92037. *Instrument:* NMR Spectrometer, Model AM-600 with Accessories. *Manufacturer:* Bruker Analytische Messtechnik, GmbH, West Germany. *Intended Use:* See notice at 53 FR 43465, October 27, 1988. *Reasons For This Decision:* The foreign instrument provides a magnetic field strength of 14.095 tesla. *Advice Submitted By:* National Institutes of Health, January 26, 1989.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, was being manufactured in the United States at the time it was ordered (August 28, 1987). The National Institutes of Health advises in its memorandum dated January 26, 1989 that (1) this capability is pertinent to the applicant's intended purposes and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use being manufactured at the time the foreign instrument was ordered.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument being manufactured in the United States at the time it was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-12475 Filed 5-24-89; 8:45 am]

BILLING CODE 3510-DS-M

Vanderbilt University et al.; Consolidated Decision on Applications for Duty-Free Entry of Accessories

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88-311. *Applicant:* Vanderbilt University Medical Center, Nashville, TN 37232. *Instrument:* Two (2) Radioisotope Hot Cells. *Manufacturer:* Von Gahlen International Inc., The Netherlands. *Intended Use:* See notice at 53 FR 46106, November 16, 1988. *Reasons for this Decision:* The foreign article radiologically isolates the operator during the synthesis and manipulation of radioisotopic tracer compounds used in PET scanning. *Advice Submitted By:* National Institutes of Health, January 26, 1989.

Docket Number: 89-010. *Applicant:* University of Southern California, Los Angeles, CA 90089-0740. *Instrument:* Mass Spectrometer, Model PRISM. *Manufacturer:* VG Isogas, United Kingdom. *Intended Use:* See notice at 53 FR 51576, December 22, 1988. *Reasons for This Decision:* The foreign instrument provides a guaranteed internal precision of 0.006°/00 of 0.1μ mole samples of carbon dioxide. *Advice Submitted By:* National Institute of Standards and Technology, January 30, 1989.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The National Institutes of Health and National Institute of Standards and Technology advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 12476 Filed 5-24-89; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit; Paul K. Dayton and Timothy Ragen (P450)

Notice is hereby given that an applicant has applied in due form for a permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. *Applicant:* Paul K. Dayton and Timothy Ragen, Scripps Institution of Oceanography (A-001), University of California (San Diego), La Jolla, CA 92093.

2. *Type of Permit:* Scientific Research.

3. *Number and Name of Animals:* 150 northern fur seal pups (*Callorhinus ursinus*).

4. *Type of Take:* The applicant proposes to take and harass northern fur seal pups on rookeries of St. Paul Island of the Pribilof Islands in the Bering Sea. Radio transmitters, with antennas, will be attached to each pup to determine early migratory patterns as pups leave St. Paul Island in the Bering Sea and enter the North Pacific through the Aleutian passes.

5. *Duration of activity:* One year with possible request for renewal depending on funding and first year's findings. Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application

should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Hwy., Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Hwy., Rm. 7330, Silver Spring, Maryland 20910; and

Director, Alaska Region, National Marine Fisheries Service, NOAA, 709 West 9th Street, Federal Bldg., Juneau, Alaska 99802;

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731-7415.

Date: May 18, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 89-12462 Filed 5-24-89; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Sri Lanka

May 19, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: May 26, 1989.

FOR FURTHER INFORMATION CONTACT: Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6580. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limtis for Categories 338/339, 347/348/847, 352/652, 363 and 641 are being increased by application of swing, reducing the limits for Categories 237, 359-C/659-C and 369-D.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 17967, published on May 19, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

May 19, 1989.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on May 18, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka and exported during the period which began on June 1, 1988 and extends through June 30, 1989.

Effective on May 26, 1989, the directive of May 18, 1988 is hereby amended to adjust the limits for cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Sri Lanka. (Categories 337 and 637 were changed to Category 237 upon implementation of the Harmonized System.)

Category	Adjusted thirteen-month limit [1]
237	144,822 dozen
338/339	861,250 dozen of which not more than 717,708 dozen shall be in Categories 338-S/339-S [2]
347/348/847	895,700 dozen
352/652	918,667 dozen
359-C/659-C [3]	604,006 kg
363	8,325,417 numbers
369-D [4]	567,494 kg
641	677,517 dozen

[1] The limits have not been adjusted to account for any imports exported after May 31, 1987.

[2] In Categories 338-S/339-S, only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0035, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005 in Category 338-S; and 6104.22.0060, 6104.29.2046, 6106.10.0010, .10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022 in Category 339-S.

[3] In Categories 359-C/659-C, only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 in Category 359-C; and 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4020, 6211.33.0010, 6211.33.0017 and 6211.43.0010 in Category 659-C.

[4] In Category 369-D, only HTS numbers 6302.60.0010 and 6302.91.0020.

The Committee for the Implementation of Textile Agreements has determined that these action fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-12552 Filed 5-24-89; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Army

Military Traffic Management Command; Billing Procedures

AGENCY: Military Traffic Management Command (MTMC), Department of the Army.

ACTION: Amended rules for billing procedures on selected traffic by all methods of transportation.

SUMMARY: **Federal Register** Vol. 54, No. 1, Tuesday, January 3, 1989. Notices published notification of Billing Procedures on Selected Traffic by All Methods of Transportation. DOD is modifying the billing procedures. The rule established for all modes of traffic to cover Government bills of lading for which the total charge(s) are $10,000 or more is being amended to acquire when: Total charge(s) are $5,000 or more. Also add the following paragraph.

Guaranteed Traffic vouchers that contain a mixture of GBLs containing charges equal to or less than the

changes in block 28 are mixed with GBLs containing charges that are greater than the charges shown in block 28 will be returned to the carrier as an improper invoice. Other vouchers which contain GBLs with charges less than $5,000 mixed with GBLs with charges of $5,000 or more will also be returned to the carrier as an improper invoice.

All other provisions of the notice as originally published remain unchanged.

EFFECTIVE DATE: June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Lamm, Headquarters, Military Traffic Management Command, ATTN: MTIN–FQ, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, or telephone (202) 756–1173.

Kenneth L. Denton,

Department of the Army, Alternate Liaison Officer With the Federal Register.

[FR Doc. 89–12534 Filed 5–24–89; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers, Department of the Army

Intent to Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Flood Control Reservoir for the O'Hare System of the Chicagoland, Underflow Plan in Cook County, Illinois

AGENCY: U.S. Army Corps of Engineers, Chicago District, DoD.

ACTION: Notice of intent.

SUMMARY: The proposed project involves the construction of a flood control reservoir for the combined sewer service area of the O'Hare Water Reclamation Plant in Cook County, Illinois. The intent of the project is to reduce flood damages caused by sewer system backflows into basements, ponding of surface runoff, and overbank flooding.

FOR FURTHER INFORMATION CONTACT: Ms. Rose Austin 312/353–7795, U.S. Army Corps of Engineers, Chicago District, 219 South Dearborn Street, Chicago, Illinois 60604–1797.

SUPPLEMENTARY INFORMATION:

1. Construction of a flood control reservoir at least 1,050 acre-feet in capacity was authorized by the Water Resources Development Act of 1986 (Pub. L. 99–662). The reservoir would be excavated below existing ground level at a site northwest of the city of Chicago in unincorporated Cook County, Illinois. It would drain to the nearby O'Hare Water Reclamation Plant and would be dry during non-flood periods. Necessary appurtenant works would be included in conjunction with an existing deep tunnel system for combined sewer overflow abatement and treatment. An inlet/outlet structure would be constructed at the present drop shaft to connect the reservoir to the deep tunnel.

2. Prior to Congressional authorization of the proposed action, a number of reservoir alternatives were evaluated. The plans for the proposed sites ranged from 80 to 2700 acre-foot capacities. A second reservoir at a neraby site in the Village of Mount Prospect was also considered, and reservoir plans ranged from 140 to 720 acre-foot capacities. Alternatives to be evaluated for this study and DEIS are:

a. No action.

b. A 1,050 acre-foot reservoir at the 100 acre site in unincorporated Cook County.

c. A 1,650 acre-foot reservoir at the same location.

3. The reservoir considered for this project is essentially from a plan developed by the Metropolitan Water Reclamation District of Greater Chicago (MWRDGC), formerly known as the Metropolitan Sanitary District of Greater Chicago. Designs for the Tunnel and Reservoir Plan (TARP) were released in 1974 and were divided into Phase 1 and Phase 2. Phase 1, which primarily involves water quality enhancement, has been implemented by MWRDGC for the area under consideration. Phase 2, which primarily concerns flood control, includes the proposed reservoir. The U.S. Army Corps of Engineers completed a feasibility study and environmental assessment for the O'Hare system in 1984. Public participation has included numerous meetings and coordination with the state of Illinois, MWRDGC, and interested Federal, State and local agencies. Additional coordination has also been undertaken with the U.S. Fish and Wildlife Service, Illinois Department of Conservation, Illinois Historic Preservation Agency, U.S. Environmental Protection Agency, and the Northeastern Illinois Plannning Commission.

4. Significant issues to be analyzed in depth in the DEIS are destruction or disruption of terrestrial and aquatic habitat; loss of wetland; loss of a state-listed endangered plant species; destruction of an archaeological site; mitigation for habitat losses; effects on water quality; generation of aerosals; disposal of excavated material; and aesthetic effects including odors.

5. No formal public scoping meeting will be held.

6. The DEIS is expected to be available to the public in September 1989.

Date: May 11, 1989.

Jess J. Franco, Jr.,

LTC, Corps of Engineers, District Engineer.

[FR Doc. 89–12533 Filed 5–24–89; 8:45 am]

BILLING CODE 3710–HN

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests; OMB Review

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before June 26, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: May 22, 1989.

Carlos U. Rice,

Director, for Office of Information, Resources Management.

Office of Postsecondary Education

Type of Review: Extension.
Title: Perkins Loan Program Assignment Form.
Frequency: On Occasion.
Affected Public: Individuals or households.
Reporting Burden:
Responses: 60,000.
Burden Hours: 30,000.
Recordkeeping Burden:
Recordkeepers: 3,000.
Burden Hours: 1,500.
Abstract: This form will be used to collect pertinent information regarding defaulted student loans from institutions participating in the Perkins Loan Program. The institutions use this form to assign defaulted student loans to the Federal Government for collection.

Office of Vocational and Adult Education

Type of Review: Extension.
Title: Carl D. Perkins Vocational Education Act of 1984-Reporting Requirements.
Frequency: Biennial.
Affected Public: State or local governments.
Reporting Burden:
Responses: 4,212.
Burden Hours: 1,638,712.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: State Board for Vocational Education must submit state plans under the Carl D. Perkins Vocational Education Act, as amended. The Department uses the information to determine compliance with the Act and to make grant awards.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.
Title: Clearance of Amendments to the RSA Discretionary Grant Application.
Frequency: Annually.
Affected Public: State and local governments; Businesses or other for-profit; Non-profit institutions.
Reporting Burden:
Responses: 1,170.
Burden Hours: 1,170.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by States and public or non-profit organizations to apply for grants under the RSA Discretionary Grants Program. The Department uses the application to make grant awards.

[FR Doc. 89-12567 Filed 5-24-89; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No. 84.224A]

National Institute on Disability and Rehabilitation Research; Applications for New Awards Under the State Grants Program for Technology-Related Assistance for Individuals With Disabilities for Fiscal Year 1989

Agency: Department of Education.
Purpose of Program: This program provides financial assistance to States to assist each State to develop and implement a consumer-responsive, comprehensive statewide program of technology-related assistance for individuals with disabilities.
Deadline for Transmittal of Applications: July 24, 1989.
Applications Available: May 25, 1989.
Available Funds: $4,600,000.
Estimated Number of Awards: 8–9.
Estimated Range of Awards: $500,000–$600,000.
Estimated Average Award: $550,000.
Project Period: Up to 36 months, with the possibility of a 24-month extension.

Note: The Department of Education is not bound by any estimates in this notice, except as otherwise provided by statute.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), in 34 CFR Parts 74, 75, 77, 80, (with exceptions as noted in the following program regulations), 81, and 85, and (b) when effective after adoption in final, the proposed regulations for this program published in the **Federal Register** on April 12, 1989 at 54 FR 14778.

It is the policy of the Department of Education not to solicit applications before the publication of final regulations. However, in this case, it is essential to solicit applications on the basis of the notice of proposed rulemaking (NPRM) for this program, because the Department must initiate the request for applications at this time in order for awards to be made in fiscal year 1989.

The Secretary has carefully reviewed the public comments received on the NPRM, and, on the basis of the comments, the Secretary expects to change the weights and points accorded to some of the selection criteria in the final regulations. The weights and points that the Secretary expects to assign to each of the selection criteria are as follows: Needs assessment: Weight 2/Total points 10; Goals and objectives: Weight 3/Total points 15; Plan of activities: Weight 3/Total points 15; Management plan: Weight 2/Total points 10; Evaluation plan: Weight 3/Total points 15; Inclusion of individuals with disabilities: Weight 4/Total points 20; and Coordination: Weight 3/Total points 15.

Applicants should prepare their applications based on the NPRM with the above modifications to the weights and points assigned to each of the criteria. The comments received by the Secretary did not raise any other significant policy issues with respect to the proposed regulations. The Secretary received some comments that advocated imposing additional requirements on the individual States. However, imposing additional requirements on the States would not be consistent with the legislation, that was framed to give States considerable flexibility in designing and implementing appropriate systems. The Secretary does not expect to make further changes in the final regulations that would affect applicants for funds. If any other changes are made in the final regulations for this program, applicants will be given an opportunity to amend their applications.

For Applications Contact: National Institute on Disability and Rehabilitation Research, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202–2601, Attention: Peer Review Unit. Telephone: (202) 732–1141; deaf and hearing-impaired individuals may call (202) 732–1198 for TDD services.

For Further Information Contact: Betty Jo Berland, National Institute on Disability and Rehabilitation Research, (202) 732–1139.

Program Authority: 29 U.S.C. 2201–2271.

Dated: May 18, 1989.

Patricia McGill Smith,

Acting Assistant Secretary, Office of Special Education, and Rehabilitative Services.

[FR Doc. 89-12494 Filed 5-24-89; 8:45 am]

BILLING CODE 4001-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP89-98-003 and RP89-133-001]

Colorado Interstate Gas Co.; Compliance Filing

May 19, 1989.

Take Notice that Colorado Interstate Gas Company ("CIG"), on May 15, 1989, tendered for filing the following tariff sheets to revise its FERC Gas Tariff, Original Volume No. 1:

Substitute Original Sheet No. 61G7-A
Second Substitute Original Sheet No. 61G11
Substitute Original Sheet No. 61G11-A

CIG states that the above-referenced tariff sheets are being filed in compliance with the Commission's Order issued April 28, 1989, in these dockets.

CIG states that copies of the filing were served upon all of the parties to this proceeding and affected state commissions as well as all of CIG's firm sales customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before May 26, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-12478 Filed 5-24-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-132-003]

El Paso Natural Gas Co.; Compliance Tariff Filing

May 19, 1989.

Take notice that on May, 1989, El Paso Natural Gas Company ("El Paso") filed, pursuant to Part 154 of the Regulations Under the Natural Gas Act ("NGA") promulgated by the Federal Energy Regulatory Commission ("Commission") and in compliance with ordering paragraphs (A)(1) and (2) of the Commission's order issued April 28, 1989 at Docket Nos. RP89-132-000, RP88-184-000, RP88-184-001 and TA88-1-33-000, certain tariff sheets to El Paso's FERC Gas Tariff, First Revised Volume No. 1, Original Volume No. 1-A, Third Revised Volume No. 2 and Original Volume No. 2A.

El Paso states that on March 31, 1989, at Docket No. RP89-132-000, El Paso tendered for filing certain tariff sheets which (i) revised language in Section 21, Take-or-Pay Buyout and Buydown Cost Recovery, of the General Terms and Conditions in El Paso's First Revised Volume No. 1 Tariff and (ii) reflected a revision to El Paso's rates and charges based on updated actual and estimated buyout and buydown costs, the inclusion of actual accrued interest, and certain adjustments to the Order No. 500 special surcharge. By order issued April 28, 1989, at Docket No. RP89-132-000, *et al.*, the Commission accepted for filing and suspended said tariff sheets, to be effective May 1, 1989, subject to refund and certain conditions. Accordingly, the filing responds to those conditions set forth in ordering paragraphs (A)(1) and (2) of the Commission's April 28, 1989 order.

El Paso further states that the filing reflects a revised throughput surcharge applicable to mainline services (*i.e.*, sales, interruptible and firm transportation) of $.1291, a $.0139 decrease in the surcharge reflected in El Paso's March 31, 1989 tariff filing. In addition, a decrease has occurred in the amount to be direct billed to El Paso's two-part rate sales customers and to the direct billed amount for El Paso's one-part rate sales customers as a group, identified as an Order No. 500 special surcharge.

El Paso requested pursuant to § 154.51 of the Commission's Regulations, that waiver of the notice requirements of § 154.22 of the Commission's Regulations be granted so as to permit the tendered tariff sheets to become effective May 1, 1989.

Copies of this filing were served upon all parties of record in Docket Nos. RP89-132-000, RP88-184-000 and TA88-1-33-000 and, otherwise, upon all interestate pipeline system sales customers and shippers of El Paso and all interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before May 26, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-12479 Filed 5-24-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-169-000]

Southern Natural Gas Co.; Petition for Limited Waiver of Transportation Tariff Provisions

May 19, 1989.

Take notice that on May 15, 1989, Southern Natural Gas Company (Southern) filed a petition for a limited waiver of certain provisions of its FERC Gas Tariff, Sixth Revised Volume No. 1, in compliance with § 161.3(b) of the Commission's Regulations. Southern requests a limited waiver of sections 4(j) and 5 (d) and (e) of its Rate Schedule FT and sections 4(k) and 5 (d) and (e) of its Rate Schedule IT to the extent necessary to allow Southern to waive all imbalance penalties that have accrued for the monthly balancing periods ending September 30, 1988, and all automatic scheduling penalties incurred through May 31, 1989.

Southern states that copies of this petition are being served on all of its shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before May 26, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-12480 Filed 5-24-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-128-004]

Transwestern Pipeline Co.; Tariff Changes

May 19, 1989.

Take notice that Transwestern Pipeline Company (Transwestern) on May 12, 1989 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following sheets:

Fourth Revised Sheet No. 29
Second Revised Sheet No. 29A
Fifth Revised Sheet No. 32
Second Revised Sheet No. 32A

Transwestern states that these tariff sheets are filed in compliance with the April 27, 1989 Order Accepting and Rejecting Tariff Sheets Subject to Conditions to correct improper pagination.

Any person desiring to protest said filing should on or before May 26, 1989, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a protest in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. Protest will be considered by the commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-12481 Filed 5-24-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-135-000]

Arkla Energy Resources; Technical Conference

May 19, 1989.

Pursuant to the Commission's order, which issued on April 28, 1989, a technical conference will be held to resolve the issues raised in the above-captioned proceeding. The conference will be held on Thursday, June 8, 1989, at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 89-12482 Filed 5-24-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-124-000]

CNG Transmission Corp.; Technical Conference

May 19, 1989.

Pursuant to the Commission's order, which issued on April 28, 1989, a technical conference will be held to resolve the issues raised in the above-captioned proceeding. The conference will be held on Wednesday, June 7, 1989, at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 89-12483 Filed 5-24-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-50690; FRL-3576-1]

Receipt of Notification of Intent To Conduct Small-Scale Field Testing; Genetically Altered Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a notification from Abbott Laboratories of intent to conduct small-scale field testing of a nonindigenous strain of *Beauveria bassiana.*

ADDRESS: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H-7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment(s) concerning this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked, will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for the inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and all written comments will be available for public inspection in Rm. 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip Hutton, Product Manager (PM) 17, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2690).

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to the EPA's "Statement of Policy; Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act" of June 26, 1986 (51 FR 23313), has been received from Abbott Laboratories of Chicago, Illinois. The purpose of the proposed testing is to evaluate the efficacy of the nonindigenous *Beauveria bassiana* strain towards the Colorado Potato Beetle on potatoes. The field test is to take place in Washington, Idaho, and Virginia for a combined acreage of 0.41 acre.

Following the review of the Abbott application, EPA will decide whether or not an Experimental Use Permit is required.

Dated: May 12, 1989.

Frank T. Sanders,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89-12571 Filed 5-24-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59868; FRL-3575-6]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21

days of receipt. This notice announces receipt of 7 such PMN(s) and provides a summary of each.

DATES: Close to Review Periods:
Y 89–118, 89–119, 89–120, 89–121, 89–122, 89–123, May 22, 1989.
Y 89–124, May 25, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M Street SW., Washington, DC 20460 (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 89–118

Manufacturer. Confidential.
Chemical. (G) Polyurethane.
Use/Production. (G) Polyurethane for plastic & textile industry. Prod. range: Confidential.

Y 89–119

Manufacturer. Confidential.
Chemical. (G) Aliphatic polyether urethane.
Use/Production. (G) Used in coatings applied by industrial manufacturers. Prod. range: Confidential.

Y 89–120

Manufacturer. Confidential.
Chemical. (G) Aliphatic polyether urethane.
Use/Production. (G) Used in coatings applied by industrial manufacturers. Prod. range: Confidential.

Y 89–121

Importer. Confidential.
Chemical. (S) Polyester-grafted-styrene-acrylic copolymer.
Use/Production. (G) Binder resin of pigment. Import range: Confidential.

Y 89–122

Manufacturer. Confidential.
Chemical. (S) 2-propenic acid, 2-methyl, 2-hydroxyethylester; methyl 2-methyl-propenoate; butyl 2-propenoate; phenylethene; phenylethene; ethyl-3,3-di(t-butyl peroxyl peroxyl)butrate.
Use/Production. (S) Manufacture protective & decorative coatings. Prod. range: 544,310.88–793,786.70 kg/yr.

Y 89–123

Importer. NOF America Corporation.
Chemical. (G) Alkyl acrylate; styrene.
Use/Import. (G) Open, nondispersive use (solid). Import range: Confidential.

Y 89–124

Manufacturer. Confidential.
Chemical. (G) Rosin, phenolic modified acid.
Use/Production. (G) Resin for coatings (protective). Prod. range: Confidential.

Date: May 22, 1989.

Steven Newburg-Rinn,
Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89–12563 Filed 5–24–89; 8:45 am]
BILLING CODE 6560–50–M

[FRL–3575–2]

Washington's Application for National Pollutant Discharge Elimination System (NPDES) General Permits Authority

AGENCY: Evironmental Protection Agency.

ACTION: Notice of application, public comment period.

SUMMARY: On November 30, 1988, the State of Washington submitted to EPA a final application for authority to administer General Permits under the NPDES program. Approval of this application would authorize state issuance of general permits in lieu of individual NPDES permits. The application received from Washington is complete and is now available for inspection and copying. EPA requests public comments and will hold a public hearing if sufficient public interest exists.

DATE: EPA must receive comments and requests for a public hearing on or before June 26, 1989.

ADDRESS: Address comments and requests for further information to: Ms. Andi Manzo, Water Permits Section, WD–134, Evironmental Protection Agency, 1200 Sixth Avenue, Seattle Washington 98101.

SUPPLEMENTARY INFORMATION: EPA regulations at 40 CFR 122.28 provide for the issuance of general permits to regulate discharges of wastewater which result from substantially similar operations, are of the same type wastes, require the same effluent limitations, require similar monitoring, and are more appropriately controlled under a general permit rather than by individual permits. State authority to issue general permits would significantly reduce the backlog of unissued NPDES permits and reduce the administrative burden and cost of issuing individual permits.

On November 14, 1973, Washington received authority to administer the NPDES program under section 402 of the Clean Water Act. Their program, as it currently exists, does not include provisions for the issuance of general permits. The state's final application for authority to issue general permits was received November 30, 1988. The submittal contains a letter from the state asking for approval, a copy of the Memorandum of Agreement (MOA), a supplementary NPDES program description, and copies of relevant state statutes and regulations. The submittal also includes a statement by the Attorney General certifying, with appropriate citations to the statutes and regulations, that the state has adequate legal authority to administer the general permits program.

After the close of the comment period, the Regional Administrator of EPA, with the concurrence of EPA Headquarters, will approve or disapprove this proposed modification to Washington's NPDES program. This decision will be based upon the contents of the submittal, all written comments received during the comment period and presented at the public hearing, if one is held, and upon meeting the requirements of 40 CFR Part 123. If Washington's request is approved, the Regional Administrator will notify the state and notice will be published in the **Federal Register**. Washington's program will implement Federal law; however, each general permit will be subject to EPA review and approval as provided by 40 CFR 123.44(a)(2). Public notice and opportunity to request a hearing will also be provided for each general permit. If the Regional Administrator disapproves the state's request for general permits authority, he will notify the state of the reasons for disapproval and of any revisions or modifications which are necessary to obtain approval.

The public may review Washington's application from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays, at the Evironmental Protection Agency, Region 10, 1200 Sixth Avenue, 10th Floor Library, Seattle, Washington 98101, or at the Washington Operations Office, St. Martins Campus on College and Sixth Street, Olympia, Washington 98504. Copies of the submission may also be obtained by contacting Ms. Andi Manzo at the Seattle address listed or at (206) 442–8399.

Approval of the State General Permits Program would establish no new substantive requirements, nor would it later the regulatory control over any industrial category. Program approval

would merely provide a simplified administrative process.

Dated: May 16, 1989.

Robie G. Russell,

Regional Administrator, EPA Region 10.

[FR Doc. 89-12424 Filed 5-24-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212-010382-015

Title: Argentina/U.S. Gulf Ports Agreement

Parties: A Bottacchi S.A. de Navegacion C.F.I.I. Empresa Lineas Maritimas Argentinas S.A. American Transport Lines, Inc. Companhia Maritima Nacional Companhia de Navegacao Lloyd Brasileiro Transportacion Maritima Mexicana S.A. Reefer Express Lines Pty., Ltd.

Synopsis: The proposed modification would extend the Alternate Coast Service accounting provisions, and certain provisions related to space chartering and pool accounting until December 31, 1989, and would delete certain provisions which have expired by their own terms.

Agreement No.: 212-010386-014

Title: Argentina/U.S. Atlantic Coast Agreement

Parties: A. Bottacchi S.A. de Navegacion C.F.I.I. Empresa Lineas Maritimas Argentinas S.A. American Transport Lines, Inc. Companhia de Navegacao Lloyd Brasileriro Reefer Express Lines Pty., Ltd. Van Nievelt, Goudriaan & Co., (Holland Pan AM)

Synopsis: The proposed modification would extend the Alternate Coast Service accounting provisions, and certain provisions related to space chartering and pool accounting until December 31, 1989, and would delete certain provisions which have expired by their own terms.

Agreement No.: 212-010388-011

Title: U.S. Atlantic Coast/Argentina Agreement

Parties: A. Bottacchi S.A. de Navegacion C.F.I.I. Empresa Lineas Maritimas Argentinas S.A. American Transport Lines, Inc.

Synopsis: The proposed modification would extend the Alternate Coast Service accounting provisions, and certain provisions related to space chartering and pool accounting until December 31, 1989, and would delete certain provisions which have expired by their own terms.

Agreement No.: 212-010389-011

Title: U.S. Gulf Ports/Argentina Agreement

Parties: A. Bottacchi S.A. de Navegacion C.F.I.I. Empresa Lineas Maritimas Argentinas S.A. American Transport Lines, Inc.

Synopsis: The proposed modification would extend the Alternate Coast Service accounting provisions, and certain provisions related to space chartering and pool accounting until December 31, 1989, and would delete certain provisions which have expired by their own terms.

By Order of the Federal Maritime Commission.

Dated: May 22, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-12553 Filed 5-24-89; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-002401-010.

Title: City of Long Beach Terminal Agreement.

Parties: City of Long Beach, Sea-Land Service, Inc. (Sea-Land).

Synopsis: The Agreement revises paragraph 7.2.3. of the Amended and Restated Preferential Assignment Agreement No. 224-002401-007 to reduce the minimum supplemental rent for: (1) Parcel 2 for the period May 18, 1989 to May 31, 1990, and, (2) Parcels 2 and 3 for the period commencing June 1, 1990. The Agreement also provides that Sea-Land may self-insure against losses rather than providing an insurance policy evidencing the required coverages.

Agreement No.: 224-200233-003.

Title: Philadelphia Port Corporation Terminal Agreement.

Parties: Philadelphia Port Corporation, Holt Cargo Systems, Inc.

Synopsis: The Agreement amends Exhibit C, schedule of terminal rates, of the basic terminal lease and operating agreement, as amended, for the Packer Avenue Marine Terminal. The Agreement (1) revises the all inclusive rate requirement in Item One, Table A-1, to read: "an annual volume of at least 10,000 containers" and (2) clarifies that "ocean common carrier" includes both individual ocean common carriers as well as those ocean common carriers who operate vessels under cross space charter agreements.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: May 22, 1989.

[FR Doc. 89-12514 Filed 5-24-89; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Applicants

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

ARI Shipping Corporation, 156 Fifth Avenue, New York, NY 10010, Officers: Ilan Fidler, President, Carol Polishuk, Vice President, Paul Polishuk, Treasurer

MTD (USA) Corporation, 2920 S.W. 121 Ave., Miami, FL 33175, Officers:

Armando Jacomino, President, Tania Sierra, Treasurer

Ace Pool Car, Inc. dba A.P.C. International, Inc., 977 West Cermak Road, Chicago, IL 60608, Officers: H. Cole Overman, President, Paul J. Walk, Secr./Treas./Stockh.

Sumitrans Corporation, 182–16 149th Road, Jamaica, NY 11413, Officers: Yoshihiro Hatanaka, President, Toshiaki Ooka, Treasurer/Senior Vice President, Katsuhiro Seto, Secretary/Vice President

Walker International Transportation, Inc., 600 Ridge Road, North Arlington, NJ 07032, Officers: Emmett F. Walker, Jr., President, Joseph Albino, Exec. Vice President, Roger Moll, Vice President

Golden Star Corporation, 333 Gellert Blvd., Suite 222, Daly City, CA 94015, Officers: Amado L. Bituin, President/Director, Jose J. San Gabriel, Exec. V. President/Director, Simeon N. Orejudos, Treasurer/Director, Jose Oliva, Jr., Secretary/Director

Rialto International Inc., 8629 36th S.W., Seattle, WA 98126, Officer: Sylvia G. Scherer, President/Director/Stockholder

Sea Link Corporation, 5100 S.W. 104th Ave., Cooper City, FL 33328, Officer: Terrance Swonk, President, Erick Castillo, Vice President

Macribi, Inc., 1970 N.W. 82nd Ave., Miami, FL 33126, Officers: Rosario Rexach Iraola, President, Gustavo L. Iraola, Vice President

Margaret M. Hatfield, 74 Nashua Street, Milford, NH 03055, Officer: Margaret M. Hatfield, Sole Proprietor

Agents Air Express Ltd., 123 South Main Street, Royal Oak, MI 48067, Officers: William J. Chiappetta, President/Director/Stockh., Cynthia L. Chiappetta, V. President/Director/Secr./Stockholder, Joseph A. Chiappeta, Asst. Secretary/Stockholder

Eugenia Shilling Shaw dba Air Marine Transport, 1855 Maxine Ave., San Mateo, CA 94401, Officer: Eugenia Shilling Shaw, Sole Proprietor

Ahmed Meselhy & Qadir A. Wakkiluddin dba Safa, Shipping Company, 2600 S.W. Freeway, Suite 812, Houston, TX 77098, (Partnership)

Joseph I. Naso dba Jinco, 1920 Highland Ave., Suite #218, Lombard, IL 60148, Officers: Joseph I. Naso, Sole Proprietor

Arpin International Group, James T. Murphy Highway, West Warwick, RI 02893, Officers: Kelly W. Rogers, President/C.E.O./Director, Peter J. Arpin, V. President/Treas./Dir./Stockh., David A. Arpin, V. President/Secr./Dir./Stockh., Paul G. Arpin, Director/Stockholder

J.H. Bachmann California Inc., 811 Arbor Vitae St., Inglewood, CA 90301, Officers: Horst Rehling, President/Director, Eduard Dubbers-Albrecht, Exec V. President/Director, Hans H. Meyer, Secretary/Treasurer/Director

By the Federal Maritime Commission.

Dated: May 22, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–12515 Filed 5–24–89; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

May 19, 1989.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

For Further Information Contact:

Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822)

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7340)

Final Approval Under OMB Delegated Authority of the Extension, With Revision, of the Following Report

Report title: Regulation G Registration Statement, Deregistration Statement, and Annual Report.

Agency form number: FR G–1, FR G–2, and FR G–4.

OMB Docket number: 7100–0011.

Frequency: On occasion for the FR G–1 and FR G–2; annually for the G–4.

Reporters: Federal and state credit unions, insurance companies, savings and loan associations, commercial and consumer credit organizations, production credit associations, small businesses, etc.

Annual reporting hours: 1154 (137 for the FR G–1, 5 for the FR G–2, and 1,012 for the FR G–4.

Estimated number of respondents: 581 (55 for the FR G–1, 20 for the FR G–2, and 506 for the FR G–4)

Estimated average hours per response: 2.5 for the FR G–1, 0.25 for the FR G–2, and 2.0 for the FR G–4. Small businesses are affected.

General description of report: This information collection is only mandatory (in the case of FR G–2 respondents, the information collection is only mandatory if they choose to deregister) (15 U.S.C. 78g,w) and is given confidential treatment (5 U.S.C. 552(b)(4),(b)(6)), except the FR G–2, which is not given confidential treatment.

The FR G–1 is needed to elicit certain background and financial information about a lender (other than banks, brokers, or dealers) and the types and amount of credit activities engaged in with respect to stock market credit. The FR G–2 is necessary to notify the Federal Reserve System that a lender registered under Regulation G wishes to and is eligible to deregister. The FR G–4 is required annually from all lenders registered pursuant to Regulation G in order to enable the Federal Reserve to monitor the amount of stock-secured credit extended by such lenders and to aid the Federal Reserve in administering margin requirements pursuant to the Securities Exchange Act of 1934. The revision to FR G–2 is an addition of the registrant's Internal Revenue Service Identification Number, which is already reported on the other two forms.

Proposal to Approve Under OMB Delegated Authority of the Extension, Without Revision, of the Following Reports

1. Report title: Statement of Purpose for an Extension of Credit Secured by Margin Securities by a Person Subject to Registration Under Regulation G.

Agency form number: FR G–3.

OMB Docket number: 7100–0018.

Frequency: On occasion (average of 20 per respondent).

Reporters: Federal and state credit unions, insurance companies, savings and loan associations, commercial and consumer credit organizations, small businesses, etc.

Annual reporting hours: 1,792.

Estimated number of respondents: 560.

Estimated average time per response: 10 minutes. Small businesses are affected.

General description of report: Respondent's obligation to reply is mandatory (15 U.S.C. 78g,w) and is not given confidential treatment.

This report is required to ensure that a

lender does not extend credit to purchase or carry securities in excess of the amount permitted by the Federal Reserve Board pursuant to Regulation G and to ensure that a borrower does not violate Regulation X.

2. Report title: Statement of Purpose for an Extension of Credit by a Creditor.

Agency form number: FR T–4.

OMB Docket number: 7100–0019.

Frequency: On occasion.

Reporters: Individuals, brokers and dealers.

Annual reporting hours: 117.

Estimated number of respondents: 700.

Estimated average time per response: 10 minutes. Small businesses are not affected.

General description of report: Respondent's obligation to reply is mandatory (15 U.S.C. 78g,w) and is not given confidential treatment.

This report is required in order to have a written record of the amount of "non-purpose" credit being extended, the purpose for which the money is to be used, and a listing and valuation of collateral, as well as to ensure that broker/dealers comply with the law.

Board of Governors of the Federal Reserve System, May 19, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–12510 Filed 5–24–89; 8:45 am]

BILLING CODE 6210–01–M

Jack E. Gosch et al.; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 89–8853) published at page 15016 of the issue for Friday, April 14, 1989.

Under the Federal Reserve Bank of San Francisco, the entry for Jack E. and Gwenyth A. Gosch is amended to read as follows:

1. Jack E. and Gwenyth A. Gosch; Jack Gosch Ford, Inc., TASP, Inc., and Jack Gosch Ford Retirement Plan, all of Hemet, California; to retain 3.4 percent of the voting shares of Hemet Bancorp, Hemet, California, and thereby indirectly acquire Bank of Hemet, Hemet, California.

Comments on this application must be received by June 8, 1989.

Board of Governors of the Federal Reserve System, May 19, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–12509 Filed 5–24–89; 8:45 am]

BILLING CODE 6210–01–M

GENERAL SERVICES ADMINISTRATION

Federal Supply Service

Consortium of Federal, Academic and Industry Logistics Experts; Meeting

Notice is hereby given that the Consortium of Federal, Academic, and Industry Logistics Experts will meet June 14, 1989, from 10:00 am to 12:00 noon in Crystal Mall Building 4, Room 1129, Arlington, Virginia. Notice is required by the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the implementing regulation, 41 CFR 101.6.

The purpose of the meeting is to provide a forum for discussion of logistics issues. The agenda for the meeting will include an update of fiscal year 1989 agenda topics, a report on Material Safety Data Sheets, GSA Transportation Management Practices, plus a presentation by a staff member of the University of Maryland, College of Business and Management.

The meeting will be open to the public.

For further information contact Mr. William B. Foote, Assistant Commissioner for Customer Service and Marketing, GSA/FSS, Washington, DC 20406, telephone (703) 557–7970.

Dated: May 17, 1989.

Donald C.J. Gray,

Commissioner, Federal Supply Service, GSA.

[FR Doc. 89–12463 Filed 5–24–89; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89D–0139]

Corn Shipped in Interstate Commerce for Use in Animal Feeds; Action Levels for Aflatoxins in Animal Feeds—Revised Compliance Policy Guide; Availability; EDA's Policy on Blending of Aflatoxin-Contaminated Corn From the 1988 Harvest With Noncontaminated Corn for Use in Animal Feeds

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of revised Compliance Policy Guide (CPG) 7126.33 "Action Levels for Aflatoxins in Animal Feeds." The agency is also announcing the availability of a document entitled "Background Paper to Support Action Levels for Aflatoxin-Contaminated Corn." FDA is inviting public comment concerning revised action levels for corn that contains aflatoxins and that is shipped in interstate commerce for use in animal feed. The purpose of revising CPG 7126.33 is to provide guidance on levels of aflatoxin contamination of corn intended for use in animal feeds which, in the agency's view, may be necessary to support a charge of adulteration under section 402(a)(1) of the Federal Food, Drug, and Cosmetic Act (the act). For corn from the 1988 harvest, FDA is also announcing that, under its discretion to decide how and when to employ the enforcement provisions of the act, the agency will not object to the blending of aflatoxin-contaminated corn with noncontaminated corn to produce a blended mixture of corn containing aflatoxin contamination at a level less than the pertinent action level, when the blended corn is intended only for use in animal feed.

DATE: Written comments by July 24, 1989.

ADDRESSES: Submit written requests for single copies of revised CPG 7126.33 "Action Levels for Aflatoxins in Animal Feeds" or the "Background Paper to Support Action Levels for Aflatoxin-Contaminated Corn" to the Industry Information Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. Revised CPG 7126.33 and the background paper and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John R. Wessel, Office of Regulatory Affairs (HFC–6), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1815.

SUPPLEMENTARY INFORMATION: Action levels are defined in a notice published in the **Federal Register** of February 19, 1988 (53 FR 5043). (See also April 21, 1989 (54 FR 16128), proposed rule to amend 21 CFR 509.4(b) (1) and (2), 509.6(c), and to delete 509.8 in its entirety.) In accordance with its regulation on animal feeds at 21 CFR 509.4(b)(2), FDA is announcing that it

has revised CPG 7126.33 "Action Levels for Aflatoxins in Animal Feeds" (Ref. 1). FDA is inviting public comment on the revised action levels for aflatoxins in corn shipped in interstate commerce and intended for certain food-producing animals. The revised action levels are: (1) 100 parts per billion (ppb) aflatoxins for corn intended for breeding beef cattle, breeding swine, or mature poultry; (2) 200 ppb aflatoxins for corn intended for finishing swine (i.e., 100 pounds or greater); and (3) 300 ppb aflatoxins for corn intended for finishing (i.e., feedlot) beef cattle.

The 20 ppb action level remains unchanged for aflatoxins in corn intended for food use by humans (CPG 7120.26), for aflatoxins in corn for use by immature animals (including immature poultry) and by dairy animals, and for aflatoxins in corn for which the intended use is not known (CPG 7126.33). Similarly, there is no change in the FDA action level of 0.5 ppb for residues of aflatoxins in fluid milk products (CPG 7106.10). All FDA action levels for aflatoxins are listed in FDA's CPG Manual. Both the revised action levels and those that remain unchanged are the subject of a memorandum that FDA's Associate Commissioner for Regulatory Affairs issued on October 4, 1988, to FDA field offices (Ref. 2). In that memorandum, the Associate Commissioner explained that aflatoxins are added poisonous or added deleterious substances which, depending upon their level in food or feed, may cause the food or feed to be deemed to be adulterated under section 402(a)(1) of the act (21 U.S.C. 342(a)(1)). This section states that a food (or feed) is deemed to be adulterated if it contains an added poisonous or deleterious substance "which may render [the food (or feed)] injurious to health." If the government charges such a violation of the act, the government must show that there is a reasonable possibility of harm. Thus, the action levels for aflatoxins in corn are intended to represent levels of contamination above which, in the agency's view, the government could satisfy the "may render it injurious" test under section 402(a)(1) of the act.

The October 4, 1988, memorandum recognizes that all action levels, including those for aflatoxins, must be viewed and used as guidance rather than definitive, "bright line" standards. It cites FDA's **Federal Register** notice of February 19, 1988 (53 FR 5043), which explains that the agency's current action levels are not binding on the courts, the public (including food producers), or the agency (including individual FDA employees). In other words, there can be situations where circumstances warrant enforcement action at levels below an action level or where enforcement action is not pursued even though an action level is exceeded. In considering enforcement action where aflatoxin levels are below the pertinent action level, FDA field offices must take into account the agency's ability to support the adulteration charge that will be included in the complaint. If a field office believes that enforcement action is warranted at levels below an action level, then the recommendation to the appropriate center should include all compelling reasons for pursuing such action. Similar consideration is required if a field office believes that enforcement action where aflatoxin levels are above the pertinent action level is not warranted.

Based on the available scientific data, the agency has believed and continues to believe that consumption of corn and corn products containing aflatoxins in excess of 20 ppb may be injurious to the health of humans and immature animals and, if fed to dairy cattle, may result in aflatoxin residues in fluid milk products that approach 0.5 ppb, the current action level for aflatoxin residues in such products (CPG 7106.10). Before 1988, the agency also believed that the government could probably prevail in an enforcement action based on section 402(a)(1) of the act against corn that contained aflatoxins in excess of 100 ppb and that was intended for mature beef cattle, swine, or poultry. More recently, however, FDA has been able to identify subgroups within the mature beef cattle and mature swine classes of animals for which it believes that aflatoxin levels higher than 100 ppb in corn may be necessary to support a charge of adulteration based on the "may render it injurious" clause in section 402(a)(1) of the act. For finishing swine (i.e., animals weighing 100 pounds or more), FDA believes that aflatoxin levels in excess of 200 ppb in corn could support this charge, while aflatoxins levels above 300 ppb in corn could support this charge when the corn is intended for finishing (i.e., feedlot) beef cattle. For breeding beef cattle, breeding swine, and mature poultry, the agency believes that corn containing aflatoxins in excess of 100 ppb aflatoxins could support this adulteration charge.

Accordingly, the agency has adopted and will use the revised action levels as a basis for guiding its enforcement of section 402(a)(1) of the act, provided FDA is assured that corn in interstate commerce that contains more than 20 ppb aflatoxin is destined for the appropriate subgroups of animals. Without such assurance, the agency may conclude that the corn could be destined for humans, immature animals, or dairy cattle and, if it bears or contains more than 20 ppb aflatoxin, FDA believes that the government would probably prevail in an enforcement action charging adulteration under that section of the act.

In deciding to revise the action levels for corn fed to certain animals, FDA evaluated available data on the ratios of aflatoxins in the feed to aflatoxins in various animal tissues used for human food (e.g., meat or eggs). The agency concluded that using the revised action levels for aflatoxin in corn used for animal feed is not expected to result in any significant increase in aflatoxin residues in human food.

FDA has prepared a discussion paper entitled "Background Paper to Support Action Levels for Aflatoxin-Contaminated Corn" (Ref. 3) that sets out the basis of the agency's decision to revise its action levels for aflatoxins in corn shipped in interstate commerce as described above.

The October 4, 1988, memorandum to the FDA field offices also describes the agency policy concerning blending corn containing aflatoxins with noncontaminated corn. Such blended corn is adulterated within the meaning of section 402(a)(2)(A) of the act. *Community Nutrition Institute* v. *Young*, 818 F.2d 943, 949 (D.C. Cir. 1987). To deal with possible higher than normal levels of aflatoxins in the 1988 corn harvest, however, FDA has decided to exercise its enforcement discretion to refrain from objecting to the blending of corn containing aflatoxins with noncontaminated corn to produce a total level of aflatoxin contamination in the final blended corn that is below one of the action levels for animal feed use only. See *id.* at 949–950. This policy applies only to corn from the 1988 harvest that contains aflatoxins and is considered necessary because of the severe climate conditions that occurred in many corn-producing states this past summer. The conditions were highly conducive to the formation of the molds that produce aflatoxins. Allowing blending in this situation is intended to provide an acceptable means of using corn that contains aflatoxin and that could not otherwise be lawfully shipped in interstate commerce. For FDA not to object to such blending, however, the following conditions should be met:

1. A technically feasible plan for blending has been reviewed and found acceptable by the FDA Regional Office

before blending operations begin. It should provide assurance that blending conducted in accordance with the plan can reasonably be expected to result in a finished lot of corn containing not more than 20, 100, 200, or 300 ppb of aflatoxins, depending upon the class of food-producing animals for which the blended corn is intended. The blending should be accomplished under Federal or State supervision, and the finished lot should be approved by Federal or State authorities before shipment in interstate commerce. It should be demonstrated to the satisfaction of the supervising Federal or State authority that the aflatoxin level of the blended lot is not above the intended level.

2. The aflatoxin-containing corn has not been shipped in interstate commerce before FDA reviewed the blending plan and found it acceptable. (If the corn could be shipped in interstate commerce before FDA reviewed the blending plan and found it acceptable, there would be an unacceptable risk that some persons might ship contaminated corn in interstate commerce and blend *only* if the contaminated shipments were detected by Federal or State authorities.)

3. The blended corn containing 20 ppb or less aflatoxins is for use as feed for all animals but not for human food use. The blended corn containing 100 ppb or less aflatoxins is for use as feed for only breeding beef cattle, breeding swine, and mature poultry. The blended corn containing 200 ppb or less aflatoxins is for use as feed for only finishing beef cattle or finishing swine. The blended corn containing 300 ppb or less aflatoxins is for use as feed for only finishing beef cattle.

References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Compliance Policy Guide 7126.33 "Action Levels for Aflatoxins in Animal Feeds—May 18, 1989."

2. Memorandum dated October 4, 1988, from the Associate Commissioner for Regulatory Affairs to the Regional Food and Drug Directors and District Directors.

3. "Background Paper to Support Action Levels for Aflatoxin-Contaminated Corn—March 1989."

Interested persons may, on or before July 24, 1989, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under 21 CFR 10.85.

Dated: May 18, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-12513 Filed 5-24-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86D-335]

Oral Contraceptive Drug Product Labeling; Revocation of Guidelines; Availability of Labeling Guidance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the guideline texts of professional and patient labeling for estrogen-progestogen combination oral contraceptive drug products. The guidelines are being revoked to allow the agency to provide more current assistance in the form of informal labeling guidance texts.

DATE: Effective May 25, 1989, labeling guidelines for the text of professional and patient package inserts for estrogen-progestogen combination oral contraceptive drug products are revoked and informal labeling guidance texts may be used.

ADDRESSES: Requests for copies of the informal labeling guidance texts should be sent to Philip Corfman, Division of Metabolism and Endocrine Drug Products (HFD-510), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3510. Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Adele S. Seifried, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 21, 1987 (52 FR 13132), FDA announced the availability of revised guideline texts of professional and patient labeling for estrogen-progestogen combination oral contraceptive drug products. Any person could use these guidelines to meet the requirements of 21 CFR 310.501 for estrogen-progestogen combination oral contraceptive drug products and 21 CFR 201.56, 201.57, and 201.100 for professional labeling of prescription drug products.

In the **Federal Register** of April 21, 1987 (52 FR 13107), FDA proposed to revise the requirements for patient package inserts for oral contraceptive drug products. The proposed requirements would enable patient package inserts to reflect more expeditiously current information about this class of drug products.

The revised requirements for patient package inserts for estrogen-progestogen combination oral contraceptive drug products (§ 310.501) appear in a final rule published elsewhere in this issue of the **Federal Register**. The agency has determined that the time required to finalize and announce revised guidelines prevents the agency from providing the most current medical information to manufacturers and others. Therefore, FDA is revoking the labeling guidelines.

In the place of labeling guidelines, the agency will provide informal labeling guidance texts to assist persons in meeting labeling requirements. FDA has decided to issue informal labeling guidance texts rather than guidelines to enable manufacturers and others to receive the most current information available to the agency in the most timely manner possible. Labeling guidance texts are informal documents issue under 21 CFR 10.90(b)(9). They do not bind or otherwise obligate the agency or a person referring to them and are not formal agency opinions. The agency does not require manufacturers printing professional and patient package inserts to follow the guidance labeling text. Manufacturers are free to use an alternative or modified approach, although manufacturers are encouraged to consult the Division of Metabolism and Endocrine Drug Products (address above) before drafting alternative labeling so that any differences can be resolved in advance. A person may wish to review the labeling guidance texts for estrogen-progestogen combination oral contraceptive drug products for assistance in meeting the labeling requirements at 21 CFR 310.501 for patient package inserts and at 21 CFR 201.56, 201.57 and 201.100 for professional labeling of prescription drug products. However, it should be noted that under § 314.70 (21 CFR 314.70), a holder of an approved application for a new drug is required to

submit a supplemental application to obtain approval for a change in the text of professional labeling or patient labeling.

Interested persons may submit written comments concerning the revocation of the guideline to the Dockets Management Branch (address above). Comments will be considered in determining whether reinstituting the guideline is warranted. Comments should be submitted in duplicate (except that individuals may submit one copy), identified with the docket number found in brackets in the heading of this document.

Dated: May 2, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 12512 Filed 5-24-89; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Kidney and Urologic Diseases Advisory Board on June 22 and 23, 1989, from 8:00 a.m. to approximately 5:30 p.m. each day at the Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814. The meeting, which will be open to the public, is being held to discuss the Board's activities and the development of the long-range plan to combat kidney and urologic diseases. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Dr. Ralph Bain, Executive Director, National Kidney and Urologic Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496-6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: May 16, 1989.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 89-12497 Filed 5-24-89; 8:45 am]

BILLING CODE 4140-01-M

Social Security Administration

Demonstration Grants; Announcement of Fiscal Year (FY) 1989 Research Demonstration Program (RDP), Availability of Grant Funds and Request for Applications

AGENCY: Social Security Administration, HHS.

ACTION: Notice of correction.

SUMMARY: This corrects text in the notice titled: Demonstration Grants; Announcement of Fiscal Year (FY) 1989 Research Demonstration Program (RDP), Availability of Grant Funds and Request for Applications. The notice was published in the **Federal Register** on April 6, 1989 (54 FR 13980).

FOR FURTHER INFORMATION CONTACT: Social Security Administration, Division of Disability Program Information and Studies, 5401 Security Boulevard, Room 2223 Annex Building, Baltimore, MD 21235, Telephone: (301) 965-0105.

SUPPLEMENTARY INFORMATION: In the notice titled: Demonstration Grants; Announcement of Fiscal Year (FY) 1989 Research Demonstration Program (RDP), Availability of Grant Funds and Request for Applications, published in the **Federal Register** on April 6, 1989 (54 FR 13980), make the following corrections:

1. On page 13988, in the third column, paragraph 1, line 27, "costeffective" should read "cost effective".

2. On page 13989, in the third column, paragraph 2, line 2, symbol ">" should be deleted.

3. On page 13989, in the third column, under Priority Area 5:, delete the first sentence in the first paragraph and substitute the following two sentences: "One of SSA' s highest priorities is to develop and test new VR and employment strategies to assist beneficiaries to obtain employment. Therefore, it is critical to assure that VR resources are used as effectively and efficiently as possible to secure maximum results in terms of increased placements with gainful employment and decreased dependency on the disability benefit rolls.".

4. On page 13990, in the first column, first paragraph, line 15 after " * * * amounts of resources.", insert "SSA believes there are a number of effective cost reimbursement and cost containment methods which can be demonstrated in VR/employment services programs for disability beneficiaries.".

5. On page 13990, in the first column, delete the second paragraph that begins, "SSA is seeking to test methods which * * *".

6. On page 13991, in the first column, after the first bullet, in line two, delete "8".

7. On page 14000, in the first column, Part III—Program Narrative, paragraph one, the last line "page IV-1" should read "page III-1.".

Date: May 15, 1989.

Dorcas R. Hardy,

Commissioner of Social Security.

[FR Doc. 12518 Filed 5-24-89; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-920-89-4120-11; COC48547]

Colorado; Invitation for Coal Exploration License Application; Peabody Coal Co.

Pursuant to the Minerals Leasing Act of February 25, 1920, as amended, and to Title 43, Code of Federal Regulations, Subpart 3410, members of the public are hereby invited to participate with Peabody Coal Company in a program for the exploration of unleased coal deposits owned by the United States of America in the following described lands located in Routt County, Colorado:

Township 5 North, Range 87 West, 6th P.M.
Sec. 17: NW¼NE¼, SE¼NE¼

The area described contains approximately 80.00 acres, more or less.

The application for coal exploration license is available for public inspection during the normal business hours under serial number COC48547 at the BLM Colorado State Office, Public Room, 2850 Youngfield Street, Lakewood, Colorado 80215 and at the BLM Craig District Office, 455 Emerson Street, Craig, Colorado 81625.

Any party electing to participate in this program must share all costs on a pro rata basis with the applicant and with any party or parties who elect to participate. Written Notice of Intent to Participate should be addressed to the following and shall be made within 30 days after the publication of this Notice of Invitation in the **Federal Register**:

Richard D. Tate, Chief, Mining Law and Solid Minerals Adjudication Section, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215, and

Director of Engineering, Peabody Coal Company, 1300 South Yale, Flagstaff, Arizona 86001.

Richard D. Tate,

Chief, Mining Law and Solid Minerals, Adjudication Section.

[FR Doc. 89-12548 Filed 5-24-89; 8:45 am]

BILLING CODE 4310-84-M

Tuledad/Home Camp Management Framework Plan; California

AGENCY: Susanville District Office, Bureau of Land Management, Interior.

ACTION: Notice of intent—proposed amendment of Tuledad/Home Camp Management Framework Plan.

SUMMARY: Pursuant to 43 CFR 1601.3 and 40 CFR 1501.7, notice is hereby given that the Surprise Resource Area, Cedarville, California of the Susanville District, Bureau of Land Management, Susanville, California, will prepare an amendment of the Tuledad/Home Camp Management Framework Plan (MFP). This amendment will consider livestock grazing on an area known as the Bicondoa allotment.

The Tuledad/Home Camp MFP contains a decision which cancels the domestic sheep grazing on the Bicondoa allotment and precluded cattle grazing on the same area for the purpose of re-establishing a population of Bighorn Sheep witin the Bicondoa allotment. Subsequent analysis of the Bighorn habitat requirements and competition between livestock and Bighorn sheep led to conclusions that Bighorn sheep would not use approximately half of the Bicondoa alltoment, but would extend into areas outside the boundaries of the Bicondoa allotment. Studies conducted since the adoption of the Tuledad/Home Camp MFP indicated that competition between Bighorn sheep and domestic sheep is significant, while competition between cattle and Bighorn sheep is often insignificant.

A multi-disciplinary team which included representatives from the ranching industry, the BLM, the environmental community, two State of Nevada agencies (agriculture and wildlife) and the hunting community recommedned that the Bureau and the Nevada Department of Wildlife take the necessary steps to re-establish Bighorn sheep in the area. One of the recommended steps included amending the Tuledad/Home Camp MFP to allow cattle grazing on those portions of the Bicondoa allotment that would not be considered Bighorn sheep habitat.

The issues identified are allocation of grazing resources and livestock Bighorn sheep interactions. The interdisciplinary team which will complete the amendment, is to consist of specialists in wildlife biology and range management. The amendment will be analyzed in an Environmental Assessment to determine the significance of the impacts. The alternatives to be considered are: (1) Amend the Tuledad/Home Camp MFP to allow cattle grazing on approximately one half of the Bicondoa allotment and (2) do not amend the MFP (no action).

Dates: The preparation of the Environmental Assessment will be completed by July 1989 and the amendment, including public and State Governors' (CA and NV) review is scheduled for completion in September 1989.

Public Participation: Opportunities for public input and comments will be announced through the media, a mailing list and personal contacts.

For Further Information Contact: Richard Westman, Acting, Area Manager for the Surprise Resource Area, Bureau of Land Management, P.O. Box 460, Cedarville, California 96104. Telephone (916) 279–6101.

C. Rex Cleary,

District Manager.

[FR Doc. 89–12550 Filed 5–24–89; 8:45 am]

BILLING CODE 4310–40–M

[MT–070–09–4050–91]

District Advisory Council Meeting; Montana

AGENCY: Bureau of Land Management, Butte District Office, Interior.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Butte District Advisory Council will be held Wednesday and Thursday, June 21 and 22. The meeting will begin at 1:00 p.m. on June 21 in the Butte District conference room, 106 North Parkmont (Industrial Park), Butte, Montana. The agenda will include: (1) Election of officers; (2) a demonstration of the bureau's Lands Information System (LIS); (3) scoping for the upcoming Dillon Resource Management Plan (RMP); (4) a discussion of the issues involved in implementing the Recreation 2000 plan in Montana and the Dakotas; and (5) a discussion of facilitating access to public lands in western Montana.

The meeting is open to the public. Interested persons may make oral statements to the council or file written statements for the council's consideration. Anyone wishing to make oral statements should make prior arrangements with the district manager. Summary minutes of the meeting will be maintained in the district office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: James A. Moorhouse, District Manager, Butte District, Bureau of Land Management, Box 3388, Butte, Montana 59702.

May 18, 1989.

J.A. Moorhouse,

District Manager.

[FR Doc. 89–12530 Filed 5–24–89; 8:45 am]

BILLING CODE 4310–DN–M

[CO–010–09–4320–02]

Craig, Colorado, Advisory Council Meeting

Time and Date: June 21, 1989, at 10 a.m.

Place: BLM-Craig District Office, 455 Emerson Street, Craig, Colorado.

Status: Open to public; interested persons may make oral statements at 10:30 a.m. Summary minutes of the meeting will be maintained in the Craig District Office.

Matters to be Considered:

1. Election of Officers.
2. Recreation 2000.
3. Weed Control.
4. District Riparian Plan.

Contact Person For More Information: Mary Pressley, Craig District Office, 455 Emerson Street, Craig, Colorado 81625–1129, Phone: (303) 824–8261.

Dated: May 19, 1989.

David Nylander,

Acting District Manager.

[FR Doc. 89–12529 Filed 5–24–89; 8:45 am]

BILLING CODE 4310–JB–M

[WY–920–09–4120–10]

Powder River Regional Coal Team Activities; Postponement of Public Meeting

ACTION: Public notice.

SUMMARY: The Powder River Regional Coal Team (RCT) public meeting, which was scheduled for May 31, 1989, has been postponed.

FOR FURTHER INFORMATION CONTACT: Don Brabson, Wyoming State Office, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming, 82003; telephone (307) 772–2571 or (FTS) 328–2571.

SUPPLEMENTARY INFORMATION: The public meeting of the Powder River Regional Coal Team (RCT) which was scheduled for May 31, 1989, at the Holiday Inn, Gillette, Wyoming, has been postponed. This meeting will be rescheduled later this year; however, the date and location have not yet been determined. The public will be given at least a 30-day advanced notice when the meeting is rescheduled.

The meeting is being rescheduled because **Federal Register** notice of the meeting was not published the full 30

days in advance of the May 31 meeting. This 30-day notice is a requirement of 43 CFR 1784.4–2(a).

Avis D. Rostron,

Acting State Director.

[FR Doc. 89–12528 Filed 5–24–89; 8:45 am]

BILLING CODE 4310-22-M

[NM 940–09–4111–15; TX NM 48207]

Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of 43 CFR 3108.2–3, Paradox Petroleum Company petitioned for reinstatement of oil and gas lease TX NM 48207 covering the following described lands located in:

Tracts 1, 2, 3, 4, 5
BS&F Survey, Block T

The area described contains 1,076.00 acres in Carson County, Texas. It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 per acre and 16⅔ percent, respectively. Payment of a $500.00 administrative fee has been made.

Reinstatement of the lease will be effective as of the date of termination, September 1, 1988.

Date: May 16, 1989.

Dolores L. Vigil,

Acting Chief, Adjudication Section.

[FR Doc. 89–12543 Filed 5–25–89; 8:45 am]

BILLING CODE 4310-FB-M

[MT–920–09–4111–11; SDM 40938]

Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97–451, a petition for reinstatement of oil and gas lease SDM 40938, Fall River County, South Dakota, was timely filed and accompanied by the required rental accruing from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔% respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: May 17, 1989.

June A. Bailey,

Chief, Leasing Unit.

[FR Doc. 89–12546 Filed 5–24–89; 8:45 am]

BILLING CODE 4310-DN-M

[MT–920–09–4111–11; SDM 40939]

Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97–451, a petition for reinstatement of oil and gas lease SDM 40939, Fall River County, South Dakota, was timely filed and accompanied by the required rental accruing from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔% respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: May 17, 1989.

June A. Bailey,

Chief, Leasing Unit.

[FR Doc. 89–12547 Filed 5–24–89; 8:45 am]

BILLING CODE 4310-DN-M

Realty Action; Boulder County, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; sale of public lands in Boulder County, Colorado, using modified competitive bidding.

SUMMARY: The following lands have been found suitable for sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713):

T. 1 N., R. 71 W., Sixth Principal Meridian, Colorado

Parcel	Subdivision	Acres	Case	Minimum bid
A	Sec. 8, Lot 152.	1.26	COC–46364	$4,000
B	Sec. 8, Lots 160, 166.	4.49	COC–46365	$13,500
C	Sec. 8, Lot 185.	2.45	COC–48644	$7,500

The lands described above are hereby segragated from appropriation under the public land laws, including the mining laws, pending issuance of a patent, or 270 days from the date or publication of this notice, whichever occurs first. The lands will be offered for sale at no lsss than the appraised fair market value. The patents, when issued, will be subject to existing rights-of-way. All minerals will be reserved to the United States.

Parcels A and B are initially being offered for sale under non-competitive bidding to resolve long-term inadvertent trespasses. James Burch is the designated bidder on Parcel A. Sandra and George Tyrer are the designated bidder on Parcel B. Sale of Parcel B may be subject to postponement or cancellation if conflicts are not resolved. Designated bidders who are successful purchasers must also pay their share of publication costs. In the event that neither party meets the minimum bid or other legal requirements, these lands will be opened to competitive bidding.

Parcel C is being offered for sale under modified competitive bidding. Steve Tobias. an adjoining owner, will be offered the opportunity to meet the highest sealed bid received on the sale day. All parcels that are not sold on the sale day will continue to be available for public bid until sold or the sale is cancelled.

DATES: The sales will be held on July 26, 1989, at the Canon City District BLM Office.

FOR FURTHER INFORMATION CONTACT: Detailed bidding instructions and other information about the sales may be obtained from the Canon City BLM Office, 3170 E. Main, P.O. Box 311, Canon City, Colorado 81212, or by calling Stu Parker at (719) 275–0631.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Canon City District, at the above address. In the absence of objections, this proposal will become

the final determination of the Dept. of Interior.

Stuart L. Freer

Associate District Manager.

[FR Doc. 89-12549 Filed 5-24-89; 8:45 am]

BILLING CODE 4310-JB-M

[MT-070-09-4050-91-47D: M76693]

Amendment to Notice of Realty Action; Exchange; Montana

AGENCY: Bureau of Land Management, Butte District, Interior.

ACTION: Exchange of public land for private land in Beaverhead County.

SUMMARY: The following public land has been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716. This amends the original Notice of Realty Action for M76693 published on April 7, 1989 (Vol. 54, No. 66 FR 14170). The following public lands are to be included in addition to those public lands identified in the original Notice of Realty Action.

Principal Meridian, Montana

T. 3 S., R. 9 W.
Section 3: NW¼SW¼
Section 4: SW¼SW¼
containing 80 acres of public land.

In exchange for these lands and the lands in the original Notice of Realty Action the United States will acquire the following land owned by Cherry Creek Angus Ranch of Melrose, Montana.

Principal Meridian, Montana

T. 3 S., R. 9 W.
Section 2: A portion of Lots 2 and 3; a portion of
the SE¼NW¼ and the NE¼SW¼, all segregated as part of an island in the Big Hole River.
containing approximately 45 acres.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the Bureau of Land Management at the address shown below. Any adverse comments will be evaluated by the BLM, Montana State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Information related to the exchange, including the environmental assessment/land report, is available for review at the Dillon Resource Area Office, Ibey Building, 730 N. Montana, Dillon, Montana 59725.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the public lands described above from settlement, sale, location, and entry under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976 for a period of two years from the date of first publication. The exchange will be made subject to:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945.

2. The lands will be exchanged subject to all valid, existing rights (e.g., rights-of-way, easements, and leases of record).

3. The exchange must meet the requirements of 43 CFR 4110.4-2.

4. The United States will reserve all minerals, including oil and gas, except for approximately 40 acres of mineral estate to be transferred.

This exchange is consistent with Bureau of Land Management policies and planning and has been discussed with state and local officials. The estimated completion date is summer of 1989. The public interest will be served by this exchange because it will enable the Bureau of Land Management to acquire riverfront lands with high public values and will increase management efficiency of public lands in the area.

Dated: May 18, 1989.

J.A. Moorhouse,

District Manager.

[FR Doc. 89-12531 Filed 5-24-89; 8:45 am]

BILLING CODE 4310-DN-M

[CA-010-09-4333-11]

Designation of the Briceburg Day Use Area Folsom Resource Area, Bakersfield District, California

AGENCY: Bureau of Land Management Interior.

ACTION: Designation of certain public lands in Mariposa County, California, adjacent to the Merced River and State Highway 140 (known as Briceburg) as a Day Use Area. Hours of use are from sunrise to sunset.

SUMMARY: The location of Briceburg is described as a portion of the East Half of the Northeast Quarter (E½NE¼) of Section 10, Township 4 South, Range 18 East, Mount Diablo Meridian. This 16-acre parcel has been acquired by the Bureau of Land Management to enhance recreation opportunities and public land management within the Merced Wild and Scenic River Study Corridor.

Briceburg is designated a Day Use Area only. No camping or other overnight activities will be allowed.

SUPPLEMENTARY INFORMATION: This use restriction is established to protect and enhance the historic building site, provide for a safe ingress and egress point at State Highway 140, and to provide for the high demand for recreation opportunities in the limited space available for public use.

Authority for this restriction order is contained in 43 CFR 8364.1. Any person who fails to comply with a restriction order may be subject to a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Penalties are contained in 43 CFR 8360.0-7. Only delegated Federal Law Enforcement Officers, or any California State Peace Officer as defined in California Penal Code Section 830, or officials of the United States Departments of Interior and Agriculture, while engaged in these official duties, shall be exempt from this order.

DATES: This order is in effect immediately and the order is permanent until cancelled, amended or replaced.

FOR FURTHER INFORMATION CONTACT: Deane K. Swickard, Area Manager, Bureau of Land Management, Folsom Resource Area, 63 Natoma Street, Folsom, CA 95630; (916) 985-4474.

Date: May 18, 1989.

D. K. Swickard,

Resource Area Manager.

[FR Doc. 89-12539 Filed 5-24-89; 8:45 am]

BILLING CODE 4310-40-M

[ID-942-09-4730-12]

Filing of Plats of Survey; Idaho

The plats of survey of the following described land, were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 10:00 a.m., May 18, 1989.

The plat representing the dependent resurvey of portions of the east boundary, subdivisional lines, and meanders of the left bank of the Snake River, and the subdivision of sections 1 and 12, T. 6 S., R. 8 E., Boise Meridian, Idaho, Group 676, was accepted April 27, 1989.

The plat representing the dependent resurvey of portions of the north boundary and subdivisional lines, and the subdivision of sections 6 and 7, T. 6 S., R. 9 E., Boise Meridian, Idaho, Group 682, was accepted April 27, 1989.

The plat representing the dependent resurvey of portions of the west boundary, subdivisional lines, and the meanders of the right bank of the Snake River, and the subdivision of sections 18 and 19, T. 11 N., R. 6 W., Boise Meridian,

Idaho, Group No. 677, was accepted May 3, 1989.

The plat representing the dependent resurvey of portions of the south boundary of T. 20 N., R. 21 E., the west boundary of T. 19 N., R. 22 E., the subdivisional lines, and the subdivision of section 1, T. 19 N., R. 21 E., Boise Meridian, Idaho, Group No. 744, was accepted May 8, 1989.

The plat representing the corrective dependent resurvey of a portion of the subdivisional lines and subdivision of section 2, T. 45 N., R. 3 W., Boise Meridian, Idaho, Group No. 774, was accepted May 3, 1989.

These surveys were executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

May 18, 1989.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 89-12532 Filed 5-24-89; 8:45 am]

BILLING CODE 4310-GG-M

[ES-960-09-4214-10; BLM-049147, ES-17462, ES-32750]

Proposed Withdrawal and Opportunity for Public Meeting; Florida

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service proposes to withdraw 411.78 acres of public land for addition to Pine Island and Matlacha Pass National Wildlife Refuges. Notice of the proposed withdrawal has been published which closed the land for up to 2 years from surface entry and mining. This notice provides a public comment period and opportunity for a public meeting.

DATE: Comments and request for a public meeting must be received by August 23, 1989.

ADDRESS: Comments and meeting requests should be sent to the Eastern States Director, BLM, 350 South Pickett, Alexandria, Virginia 22304.

FOR FURTHER INFORMATION CONTACT: Alzata L. Ransom, BLM, Eastern States Office, 703-461-1322.

SUPPLEMENTARY INFORMATION: Notice of Proposed Withdrawal was published in the **Federal Register**, 37 FR 17069, August 24, 1972, 42 FR 34938, July 7, 1974, 49 FR 28344, June 28, 1984 (a copy of which will be supplied upon request), which segregated the land described therein from settlement, sale, location, or entry under the public land laws, including the United States mining laws (30 U.S.C. Ch. 2), for up to 2 years from the date of publication of that notice.

For a period of 90 days from the date of the publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in the connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting. The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

G. Curtis Jones, Jr.,

State Director.

[FR Doc. 89-12536 Filed 5-24-89; 8:45 am]

BILLING CODE 4310-GJ-M

[NM-940-09-4214-11; NM NM 0556788, NM NM 46843]

Proposed Continuation of Withdrawals; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes that two withdrawals for the Coyote Administrative Site and the Coyote Plaza Administrative Site continue for an additional 20 years, and the two sites be combined into one known as the Coyote Administrative Site. The withdrawals closed 130.27 acres to all forms of appropriation under the public land laws, including the mining laws, but not to mineral leasing, and 276.76 acres to settlement, location, sale or entry. Under this action, the land will remain closed to location and entry under the United States mining laws, and will remain open to mineral leasing. The land will be opened to operation of the public land laws generally.

DATE: Comments should be received by August 23, 1989.

ADDRESS: Comments should be sent to New Mexico State Director, BLM, P.O. Box 1449, Santa Fe, New Mexico 87504-1449.

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland, BLM, New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87504, 505-988-6071.

SUPPLEMENTARY INFORMATION: The U.S. Department of Agriculture, Forest Service, proposes that the existing land withdrawals made by Executive Order No. 4599 dated March 1, 1927, and Public Land Order No. 3730 be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

Santa Fe National Forest

Coyote Administrative Site

T. 22 N., R. 3 E.,
sec. 2, lots 24 and 25;
sec. 3, lots 10, 11, 12, 14, 15, and E½SE¼;
sec. 11, N½NW¼.
The area described contains 407.03 acres in Rio Arriba County.

The withdrawal is essential for protection of substantial capital improvements on the Coyote Administrative Site, Santa Fe National Forest. The withdrawals closed 130.27 acres to all forms of appropriation under the public land laws, including the mining laws, but not to mineral leasing, and 276.76 acres to settlement, location, sale or entry. Under this action, the land will remain closed to location and entry under the United States mining laws, and will remain open to mineral leasing. The land will be opened to operation of the public land laws generally. No change in the use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**.

The existing withdrawal will continue until such final determination is made.

Dated: May 16, 1989.

Gilbert O. Lockwood,

State Director, Acting Associate.

[FR Doc. 89-12538 Filed 5-24-89; 8:45 am]

BILLING CODE 4310-FB-M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

Approval for the information collection listed below has been requested from the Office of Mangement and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the collection of information requirement and supporting documentation may be obtained by contacting the Bureau Clearance Officer at the phone number listed below. Comments and suggestions on the collection of information should be made directly to the Bureau Clearance Officer, Mail stop 632, Parkway Atrium, 381 Elden Street, Herndon, Virginia 22070; and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395-7340; (OMB Project No. 1010-0059); with copies of Gerald D. Rhodes; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646; Room 377; Minerals Management Service; Parkway Atrium, 381 Elden Street, Herndon, Virginia 22070.

Title: Oil and Gas and Sulphur Operations in the Outer Continental Shelf (OCS), 30 CFR Part 250.

Abstract: Rules governing oil, gas, and sulphur operations in the OCS were consolidated, updated, and published as 30 CFR Part 250 on April 1, 1988. They became effective May 31, 1988. All subparts of the revised rules contain narrative information collection requirements which have been approved by OMB. The information collection previously approved by OMB did not include the information colection requirements contained in § 250.126(b)(1) and (2) of Subpart H, Production Safety Systems. The Minerals Management Service (MMS) determined that the additional information was necessary if lessees were to be permitted to use noncertified valves from their inventory. The decision to permit the use of noncertified valves in a lessee's inventory on the publication date of the final rule substantially reduced the economic impact of the revised regulations on lessees, in that a lessee could now use any noncertified valve which it had added to its inventory between January 1980 and April 1, 1988.

The OMB's approval for the additional collection of information was requested and a notice published in the **Federal Register** on July 26, 1988 (53 FR 28072). The OMB subsequently disapproved the additional information collection and instructed MMS to reevaluate its estimated burden hours for the requested approval.

One comment was received in response to the **Federal Register** Notice of July 26, 1988, which indicated that the commenter had expended a substantially longer period of time preparing the requested information than MMS had estimated would be required for responses. The MMS has reviewed and revised its estimate of the burden hours required for compliance with the new information collection requirement.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Federal OCS oil, gas, and sulphur lessees.

Estimated Completion Time: 35.4 hours.

Annual Responses: 148.

Annual Recordkeeping: 1687.

Annual Burden Hours: 6,923.

Bureau Clearance Officer: Dorothy Christopher, (703) 787-1239.

Date: April 29, 1989.

Wm. D. Bettenberg,

Associate Director for Offshore Minerals Management.

[FR Doc. 89-12545 Filed 5-24-89; 8:45 am]

BILLING CODE 4310-MR-M

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents prepared for OCS mineral proposals on the Gulf of Mexico OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Environmental Assessments (EA's) and Findings of No Significant Impact (FONSI's), prepared by the MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice.

Activity/Operator	Location	Date
Tenneco Oil Exploration and Producing, four exploratory wells, SEA No. N-3115.	Destin Dome Blocks 166 and 167, Leases OCS-G 6419 and 6420, 30 miles southwest of Panama City, FL.	October 13, 1988
Texaco Inc., three exploratory wells, SEA No. N-3132.	Destin Dome Block 208, Lease OCS-G 8346, 39 miles southwest of Panama City, FL.	October 28, 1988
Chevron U.S.A. Inc., one exploratory well, SEA No. R-2336.	Destin Dome Block 167, Lease OCS-G 6420, 22 miles southwest of Panama City, FL.	March 17, 1989
Amoco Production Company, structure removal operations, SEA No. SEA No.ES/SR 88-050.	South Marsh Island Area, Block 33, Lease OCS 0780, 52 miles south of Iberia Parish, LA.	November 8, 1988
Amoco Production Company, structure removal operations, SEA No. ES/SR 88-051.	South Marsh Island Area, Block 33, Lease OCS 0780, 52 miles south of Iberia Parish, LA.	August 5, 1988
Union Exploration Partners, Ltd., structure removal operations, SEA No. ES/SR 88-061.	Vermilion Area, Block 26, Lease OCS 0297, 5 miles south of Vermilion Parish, LA.	October 3, 1988
Union Exploration Partners, Ltd., structure removal operations, SEA No. ES/SR 88-061A.	Vermilion Area, Block 26, Lease OCS 0297, 5 miles south of Vermilion Parish, LA.	October 3, 1988
Columbia Gas Development, structure removal operations, SEA No. ES/SR 88-062.	West Cameron Area, South Addition, Block 479, Lease OCS-G 2218, 85 miles south of Cameron Parish, LA.	October 7, 1988
Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 88-063.	South Timbalier Area, Block 21, Lease OCS 0166, 4 miles south of Bay Marchand, LA.	December 16, 1988
ODECO Oil and Gas Company, structure removal operations, SEA No. ES/SR 88-064.	South Pelto Area, Blocks 12 and 20, Leases OCS 072 and 074, 9 miles south of Terrebonne Parish, LA.	October 20, 1988
Arco Oil and Gas Company, structure removal operations, SEA No. ES/SR 88-065.	West Cameron Area, Block 238, Lease OCS-G 2834, 48 miles south of Cameron Parish, LA.	October 24, 1988

Activity/Operator	Location	Date
ODECO Oil & Gas Company, structure removal operations, SEA No. ES/SR 89-001.	South Pelto Area, Block 20, Lease OCS 074, 10 miles south of Terrebone Parish, LA.	October 19, 1988
Texaco U.S.A., structure removal operations, SEA No. ES/SR 89-002.	Eugene Island Area, Block 29, Lease OCS-G 5038, 23 miles south of St. Mary Parish, LA.	December 9, 1988
Mobil Exploration & Producing U.S. Inc., structure removal operations, SEA No. ES/SR 89-003.	Eugene Island Area, Block 147, Lease OCS-G 4448, 40 miles south of St. Mary Parish, LA.	January 30, 1989
Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 89-004.	South Timbalier Area, Block 41, Lease OCS 0263, 10 miles south of Lafourche Parish, LA.	January 12, 1989
Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 89-005.	South Timbalier Area, Block 160, Lease OCS-G 4828, 38 miles southwest of Lafourche Parish, LA.	January 12, 1989
Kerr-McGee Corporation, structure removal operations, SEA No. ES/SR 89-006.	East Cameron Area, Block 2, Lease OCS-G 4412, 4 miles south of Cameron Parish, LA.	January 30, 1989
ODECO Oil & Gas Company, structure removal operations, SEA No. ES/SR 89-007.	South Pelto Area, Block 19, Lease OCS 073, 18 miles south of Terrebonne Parish, LA.	January 12, 1989
ODECO Oil & Gas Company, structure removal operations, SEA No. ES/SR 89-008 and 89-009.	Ship Shoal Area, Blocks 93, 94, 113, and 114, Leases OCS 063, 042, 064, and 067, 12 miles south of Terrebonne Parish, LA.	January 12, 1989
Oxy USA Inc., structure removal operations, SEA No. ES/SR 89-010.	Galveston Area, Block 144, Lease OCS-G 3374, 11 miles southeast of Chambers County, TX.	February 8, 1989
Conoco Inc., structure removal operations, SEA No. ES/SR 89-011.	West Cameron, Block 69, Lease OCS-G 2126, 10 miles south of Cameron Parish, LA.	April 11, 1989
Conoco Inc., structure removal operations, SEA No. ES/SR 89-012.	East Cameron Area, Block 48, Lease OCS 0768, 20 miles south of Cameron Parish, LA.	April 11, 1989
ODECO Oil & Gas Company, structure removal operations, SEA No. ES/SR 89-014, 89-015, and 89-017.	Vermilion Area, Blocks 101 and 102, Leases OCS 0564 and OCS-G 3392, 24 miles south of Vermilion Parish, LA.	March 8, 1989
ODECO Oil & Gas Company, structure removal operations, SEA No. ES/SR 89-016 and 89-018.	Eugene Island, Block 47, Lease OCS 0317, 9 miles south of Iberia Parish, LA.	March 13, 1989
Mark Producing, structure removal operations, SEA No. ES/SR 89-019.	Eugene Island Area, South Addition, Block 311, Lease OCS-G 3408, 80 miles south of Iberia Parish, LA.	March 3, 1989
Kerr-McGee Corporation, structure removal operations, SEA No. ES/SR 89-020.	Ship Shoal Area, Block 217, Lease OCS-G 1021, 45 miles south of Terrebonne Parish, LA.	May 4, 1989
ODECO Oil & Gas Company, structure removal operations, SEA No. ES/SR 89-021.	Ship Shoal Area, Block 94, Lease OCS 042, 12 miles south of Terrebonne Parish, LA.	March 10, 1989
Arco Oil and Gas Company, structure removal operations, SEA No. ES/SR 89-022A.	East Cameron Area, Block 131, Lease OCS-G 3535, 39 miles south of Cameron Parish, LA.	March 27, 1989
TXP Operating Company, structure removal operations, SEA No. ES/SR 89-023.	High Island Area, South Addition, Block A-492, 102 miles south of Jefferson County, TX.	May 1, 1989
Mesa Operating Limited Partnership, structure removal operations, SEA No. ES/SR 89-025.	South Pelto Area, Block 12, Lease OCS-G 3588, 9 miles southeast of Terrebonne Parish, LA.	April 6, 1989
Marathon Oil Company, structure removal operations, SEA No. ES/SR 89-026.	High Island Area, East Addition, South Extension, Block A-279, Lease OCS-G 2403, 92 miles southeast of Galveston, TX.	May 4, 1989
Shell Offshore Inc., structure removal operations, SEA No. ES/SR 89-027.	South Marsh Island Area, Block 58, Lease OCS-G 1194, 63 miles south of Vermilion Parish, LA.	March 16, 1989
SONAT Exploration Company, structure removal operations, SEA No. ES/SR 89-028/029.	East Cameron Area, Blocks 31 and 25, Leases OCS-G 4099 and 4203, 6 to 9 miles south of Cameron Parish, LA.	March 27, 1989
Walter Oil and Gas Corporation, structure removal operations, SEA No. ES/SR 89-032/033/034.	Vermilion Area, Blocks 178, 164, and 179, Leases OCS 0433, 0493, and 0492, 45 miles south of Terrebonne Parish, LA.	May 4, 1989
Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 89-036/037.	West Cameron Area, Block 28, Lease OCS-G 2125, 10 miles south of Cameron Parish, LA.	May 4, 1989
Conoco Inc., structure removal operations, SEA No. ES/SR 89-038.	Vermilion Area, Block 22, Lease OCS-G 2865, 8 miles south of Vermilion Parish, LA.	May 4, 1989

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, Telephone (504) 736-2519.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for and the development/production of oil and gas resources and structure removals on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA. This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Date: May 16, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-12527 Filed 5-24-89; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Petrobras America Inc., has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 8642, Block 90, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Freshwater City, Louisiana.

DATE: The subject DOCD was deemed submitted on May 16, 1989. Comments must be received on or before June 9, 1989, or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: May 17, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89–12526 Filed 5–24–89; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Concession Contract; Exum Mountain Guides

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession contract with Exum Mountain Guides, authorizing them to continue to provide mountain climbing instruction and guided mountain climbing trips for the public at Grand Teton National Park, Wyoming, for a period of five (5) year from January 1, 1989, through December 31, 1993.

EFFECTIVE DATE: June 26, 1989.

ADDRESS: Interested parties should contact the Regional Director, Rocky Mountain Region, National Park Service, 12795 West Alameda Parkway, P.O. Box 25287, Lakewood, Colorado 80225, for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This authorization renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on December 31, 1987, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the authorization and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be received on or before the thirtieth (30th) day following publication of this notice to be considered and evaluated.

Date: May 17, 1989.

Richard A. Strait,

Acting Regional Director, Rocky Mountain Region.

[FR Doc. 89–12516 Filed 5–24–89; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–299 and 731–TA–431 (Preliminary)]

Aluminum Sulfate From Venezuela

Determinations

On the basis of the record [1]developed in the subject investigations, the Commission determines,[2] pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Venezuela of aluminum sulfate, provided for in subheading 2833.22.00 of the Harmonized Tariff Schedule of the United States (formerly provided for in item 417.16 of the Tariff Schedules of the United States), that are alleged to be subsidized by the Government of Venezuela. The Commission also determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Venezuela of aluminum sulfate which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On March 29, 1989, petitions were filed with the Commission and the Department of Commerce by General Chemical de Puerto Rico, Dorado, Puerto Rico, alleging that a regional industry in the United States is materially injured by reason of subsidized and LTFV imports of aluminum sulfate from Venezuela. Accordingly, effective March 29, 1989, the Commission instituted preliminary countervailing duty investigation No. 701–TA–299 (Preliminary) and antidumping investigation No. 731–TA–431 (Preliminary).

[1] The record is defined in section 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Chairman Brunsdale dissenting.

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of April 5, 1989 (54 FR 13750). The conference was held in Washington, DC, on April 19, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 15, 1989. The views of the Commission are contained in USITC publication 2189 (May 1989), entitled "Aluminum Sulfate From Venezuela: Determination of the Commission in Investigation No. 701–TA–299 (Preliminary) Under the Tariff Act of 1930, Together with the Information Obtained in the Investigation and Determination of the Commission in Investigation No. 731–TA–431 (Preliminary) Under the Tariff Act of 1930, Together with the Information Obtained in the Investigation."

By Order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: May 16, 1989.

[FR Doc. 89–12484 Filed 5–24–89; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–242]

Certain Dynamic Random Access Memories, Components Thereof and Products Containing the Same; Commission Determination Not To Review Initial Determination, and Schedule for Filing of Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) issued by the presiding administrative law judge (ALJ) in the above captioned investigation, finding that U.S. Letters Patent 4,043,027 (the '027 patent) is not invalid as obvious under 35 U.S.C. 103, and that Samsung Company, Limited, and Samsung Semiconductor & Telecommunications Co., Limited (collectively, Samsung) infringed that patent. Prior to final disposition of the investigation, the parties to the investigation, interested government agencies, and interested members of the public are requested to file written submissions on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Andrea C. Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1105.

SUPPLEMENTARY INFORMATION: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337, as amended by section 1342 of the Omnibus Trade and Competitiveness Act of 1988) and in Commission interim rule § 210.53 (53 F.R. 33070 (Aug. 29, 1988)), to be codified at 19 CFR 210.53).

The subject investigation is being conducted to determine whether there is a violation of section 337 of the Tariff Act of 1930 in the importation or sale by Samsung of certain dynamic random access memories (DRAMs). The imports allegedly infringe claims 12–15 and 17 of the '027 patent. The complainant is Texas Instruments, Inc. of Dallas, Texas, and the respondent is Samsung.

On July 12, 1988, the United Statas Court of Appeals for the Federal Circuit issued a decision reversing and vacating portions of the Commission's original determination in this investigation, and remanding the investigation to the Commission for further proceedings consistent with the court's decision. *Texas Instruments, Inc.* v. *U.S. International Trade Commission*, No. 87–1627 (Fed. Cir., July 12, 1988) (unpublished). The Commission, in turn, remanded the investigation to an ALJ for further proceedings and issuance of an ID on the questions of obviousness and infringement of the '027 patent. *See* 53 FR 39159 (Oct. 5, 1988).

On March 29, 1989, the presiding ALJ issued a final ID concerning the obviousness and infringement issues. The ALJ found that (1) claims 12–15 and 17 of the '027 patent are not invalid as obvious under 35 U.S.C. 103; (2) Samsung's 64K, 128K, and 256K DRAMs infringe claims 12, 14, 15, and 17 of the '027 patent; and (3) Samsung's 256K DRAM infringes claim 13 of the '027 patent, but Samsung's 64K and 128K DRAMs do not infringe claim 13. No petitions for review or agency comments were received.

Having examined the ID and the record upon which it is based, the Commission concluded that the ID does not warrant review. The ID thus has become the determination of the Commission pursuant to interim Commission rule § 210.53(h). The subject ID, coupled with a previous Commission determination in this investigation that there is a single domestic industry devoted to the production of DRAMs (*Certain Dynamic Random Access Memories, Components Thereof and Products Containing the Same*, Inv. No. 337–TA–242, USITC Pub. 2034 (November 1987), constitutes a final Commission determination that the importation and sale of the accused DRAMs violates section 337.

Since the Commission has found that a violation of section 337 has occurred, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States and/or (2) cease and desist orders that could require Samsung to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of relief, if any, which should be ordered.

If the Commission concludes that relief is appropriate, it must also consider the effect of that relief upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles which are like or directly competitive with those that are subject to the investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions concerning the effect, if any, that granting relief would have on the enumerated public interest factors.

If the Commission orders relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving written submissions concerning the amount of the bond which should be imposed.

Written Submissions

The parties to the investigation are requested to file written submissions on the issues of remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than the close of business on or before June 15, 1989. Reply submissions on these issues must be

filed no later than the close of business on or before June 22, 1989. No further submissions will be permitted unless otherwise ordered by the Commission.

Interested government agencies and members of the public also may file written submissions addressing the issues of remedy, the public interest, and bonding. Such submissions must be filed not later than the close of business on or before June 22, 1989.

Commission Hearing

The Commission does not plan to hold a public hearing in connection with final disposition of this investigation.

Additional Information

All parties, government agencies, and interested persons that file written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or a portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the investigation. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential information will be treated accordingly. All nonconfidential submissions will be available for public inspection at the Secretary's office.

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: May 16, 1989.

[FR Doc. 89-12488 Filed 5-24-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No 701-TA-298 (Final)]

Fresh, Chilled, or Frozen Pork from Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of a final countervailing duty investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigation No. 701-TA-298 (Final) under section 705(b) of the Tariff Act of 1930 (19 U S.C. 1671d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of fresh, chilled or frozen pork, provided for in subheadings 0203.11.00, 0203.12.90, 0203.19.40, 0203.21.00, 0203.22.90 and 0203.29.40 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce, in a preliminary determination, to be subsidized by the Government of Canada. Commerce will make its final subsidy determination in this investigation on or before July 17, 1989, and the Commission will make its final injury determination by September 5, 1989 (see sections 705(a) and 705(b) of the act (19 U.S.C. 1671d(a) and 1671d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207), as amended, 53 FR 33041 (August 29, 1988) and 54 FR 5520 (February 2, 1989), and part 201, subparts A through E (19 CFR part 201), as amended, 54 FR 13672 (April 5, 1989).

EFFECTIVE DATE: May 8, 1989

FOR FURTHER INFORMATION CONTACT: Bruce Cates (202-252-1187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 701 of the act (19 U S.C. 1671) are being provided to manufacturers, producers, or exporters in Canada of fresh, chilled, or frozen pork. The investigation was requested in a petition filed on January 5, 1989, by the National Pork Producers Council (NPPC), Des Moines, IA, and others.[1] In response to that petition the Commission conducted a preliminary countervailing duty investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured or threatened with material injury by reason of imports of the subject merchandise (54 FR 8835, March 2, 1989).

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for

[1] Arkansas Pork Producers' Council, Atkins, AR; Colorado Pork Producers' Council, Eaton, CO; Idaho Pork Producers' Association, Caldwell, ID; Illinois Pork Producers' Association, Springfield, IL; Indiana Pork Producers' Association, Indianapolis, IN; Iowa Pork Producers' Association, Clive, IA; Michigan Pork Producers' Association, Lansing, MI; Minnesota Pork Producers' Association, Albert Lea, MN; Nebraska Pork Producers' Association, Lincoln, NE; North Carolina Pork Producers' Association, Raleigh, NC; North Dakota Pork Producers' Council, Leith, ND; Ohio Pork Producers' Council, Westerville, OH; Wisconsin Pork Producers' Association, Lancaster, WI; National Pork Council Women, Des Moines, IA; ConAgra Red Meats, Inc., Greeley, CO; Dakota Pork Industries, Inc., Minneapolis, MN; Farmstead Foods, Albert Lea, MN; IBP, Inc., Dakota City, NE; Illinois Pork Corporation, Monmouth, IL; Thorn Apple Valley, Southfield, MI; Wilson Foods, Oklahoma City, OK.

filing entries of apppearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3, as amended, 53 FR 53041 (August 29, 1988) and 54 FR 5222 (February 2, 1989)), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited Disclosure of Business Proprietary Information Under a Protective Order

Pursuant to section 207.7(a) of the Commission's rules (19 CFR § 207.7(a), as amended 53 FR 53041, August 29, 1988) and 54 FR 5222 (February 2, 1989)), the Secretary will make available business proprietary information gathered in this final investigation to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on July 12, 1989, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on August 1, 1989, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m) on July 19, 1989. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on July 24, 1989, at the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is July 24, 1989.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of section 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on August 7, 1989. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before August 7, 1989.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7 as amended, 53 FR 33041 (August 29, 1988) and 54 FR 5222 (February 2, 1989).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a) as amended, 53 FR 33041 (August 29, 1988) and 54 FR 5222 (February 2, 1989)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than August 14, 1989. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20)

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: May 15, 1989.

[FR Doc. 89-12487 Filed 5-24-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-409 (Final)]

Light-Walled Rectangular Pipes and Tubes from Argentina

Determination

On the basis of the record[1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured[3] or threatened with material injury[4] by reason of imports from Argentina of light-walled rectangular pipes and tubes,[5] provided for in subheading 7306.60.50 of the Harmonized Tariff Schedule of the United States (HTS), that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective November 21, 1988, following a preliminary determination by the Department of Commerce that imports of light-walled

[1] The record is defined in § 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)).

[2] Commissioners Lodwick and Rohr dissenting.

[3] Chairman Brunsdale and Vice Chairman Cass determine that an industry in the United States is materially injured by reason of the subject imports.

[4] Commissioners Eckes and Newquist determine that an industry in the United States is threatened with material injury by reason of the subject imports. They further determine that material injury by reason of the subject imports would not have been found but for any suspension of liquidation of entries of the merchandise.

[5] For purposes of these investigations, the term "light-walled rectangular pipes and tubes" covers welded carbon steel pipes and tubes of rectangular (including square) cross section, having a wall thickness of less than 0.156 inch (4 millimeters). Light-walled rectangular pipes and tubes were previously provided for in item 610.49 of the Tariff Schedules of the United States and were reported for statistical purposes under item 610.4928 of the *Tariff Schedules of the United States Annotated.*

rectangular pipes and tubes from Argentina were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of December 14, 1988 (53 FR 50303). The hearing was held in Washington, DC, on February 8, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 15, 1989. The views of the Commission are contained in USITC Publication 2187 (May 1989), entitled "Light-Walled Rectangular Pipes and Tubes from Argentina: Determination of the Commission in Investigation No. 731–TA–409 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: May 16, 1989.

[FR Doc. 89–12485 Filed 5–24–89; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–287]

Certain Strip Lights; Commission Decision Not To Review an Initial Determination Finding Two Respondents in Default

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) issued by the presiding administrative law judge (ALJ) finding respondents in default pursuant to Commission interim rule § 210.25.

FOR FURTHER INFORMATION CONTACT: Stephen A. McLaughlin, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–252–1095.

SUPPLEMENTARY INFORMATION: On March 27, 1989, the presiding ALJ ordered respondents Golden Apple Corporation and Cherng Lian Enterprises, Co., Ltd. to show cause why they should not be found in default. No responses to the show cause were received. Consequently, the ALJ issued the subject ID (Order No. 8) finding those respondents in default pursuant to Commission interim rule § 210.25. No petitions for review or government agency comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rule § 210.53(h) (53 F.R. 33070, Aug. 29, 1988).

By order of the Commission

Kenneth R. Mason,

Secretary.

Issued: May 17, 1989.

[FR Doc. 89–12486 Filed 5–24–89; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

Release of Waybill Data for Use by L. E. Peabody & Associates, Inc., for the American Paper Institute (API)

The Commission has received a request from L. E. Peabody & Associates, Inc. for permission to use certain data from the Commission's 1986, 1987 and, when it becomes available, the 1988 Waybill Sample. The data will be used exclusively by Peabody for a survey, to be performed for the Rail Transportation Committee of the American Paper Institute, to capture historical data related to the use of boxcars in the paper industry. L. E. Peabody & Associates, Inc. will use the information from the ICC Waybill File and will combine and group waybill data in a fashion which will keep confidential each individual firm's identity and traffic. The data requested are: STCC (7-digit), Origin railroad, Origin SPLC, Origin state, Number of carloads, Car initial and number (and other UMLER data related to this car), Weight (Actual and billed), Destination Railroad, Destination state, Complete route information (Interchange station and railroads), and record expansion factor for all shipments of commodities in the STCC group 26-Pulp, Paper and Allied Products.

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR Part 1244). From the waybill information, the Commission has developed a Public Use Waybill File that has satisfied the majority of all our waybill data request while protecting the confidentiality of proprietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill data until after: (1) Public notice is provided so affected parties have an opportunity to object and (2) certain requirements designed to protect the data's confidentiality are agreed to by the requesting party [Ex Parte No. 385(Sub-No. 2), 52 FR 12415, April 16, 1987].

Accordingly, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Transportation Analysis (OTA) within 14 calendar days of the date of this notice. They should also include all grounds for objections to the full or partial disclosure of the requested data. The Director of OTA will consider these objections in determining whether to release the requested waybill data. Any parties who objected will be timely notified of the Director's decision.

Contact: James A. Nash, (202) 275–6864.

Noreta R. McGee,

Secretary.

[FR Doc. 89–12556 Filed 5–24–88; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31449]

ISTRA Corp.—Lease and Operation Exemption—Central of Georgia Railroad Co.; Notice

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 11343–11345, the lease and operation by ISTRA Corporation of 50.3 miles of rail lines in Bulloch, Candler, Effingham, and Screven Counties, GA, owned by the Central of Georgia Railroad Company, subject to standard labor protective conditions.

DATES: The exemption will be effective on May 28, 1989. Petitions for reconsideration must be filed by June 19, 1989.

ADDRESSES: Send pleadings referring to Docket No. 31449 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' representatives: John M. Robinson (ISTRA), 9616 Old Spring Road, Kensington, MD 20895
Mark D. Perreault, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. (TDD for hearing impaired: (202) 275–1721)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289–4357/4359. [Assistance for hearing impaired is available through TDD services at (202) 275–1721.]

Decided: May 18, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89–12557 Filed 5–24–89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–290 (Sub–No. 27X)]

Central of Georgia Railroad Co.—Abandonment Exemption—Between Eufaula and Union Springs, AL

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 35.7-mile line of railroad between milepost H–339.0 at Eufaula and milepost H–374.7 in Union Springs, AL.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on June 24, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by June 5, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by June 14, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Virginia K. Young, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by May 30, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: May 17, 1989.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–12441 Filed 5–24–89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act; BASF Wyandotte Corp.; et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 9, 1989 a proposed Consent Decree in *United States of America* v. *BASF Wyandotte Corporation, et al.* (also known as *United States of America* v. *Liquid Disposal Inc., et al.*), Civil Action No. 89CV71180DT, was lodged with the United States District Court for the Eastern District of Michigan. The proposed Consent Decree concerns the hazardous waste site known as the Liquid Disposal, Incorporated ("LDI") Site, located at 3901 Hamlin Road in Shelby Township, Macomb County, Michigan. The proposed Consent Decree requires those persons named as Settling Defendants to implement the remedial action selected for the LDI Site, to pay all United States Environmental Protection Agency oversight costs, and to reimburse the United States for a portion of its past costs associated with the LDI Site. The Consent Decree also includes a settlement with a group of 493 *de minimis* Defendants. Under the terms of the Consent Decree, the United States will recover approximately $1.94 million of its past costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States of America* v. *BASF Wyandotte Corporation, et al.* D.J. Ref. 90–11–2–220.

The proposed Consent Decree may be examined at the office of the United States Attorney, Eastern District of Michigan, Office of the United States Attorney, 231 West Lafayette, Detroit, Michigan 48226, and at the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois, 60604. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of

the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $86.20 (for the Consent Decree, appendices, and all signature pages) or $36.20 (for the Consent Decree and appendices) (10 cents per page reproduction cost) payable to the Treasurer of the United States. Additional background information relating to the settlement is available for review at the EPA's Region V office

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division

[FR Doc. 89-12466 Filed 5-24-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act; Bedford, OH, et al.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that a proposed partial consent decree in *United States* v. *City of Bedford, Ohio and the State of Ohio*, Civil Action No. 85-2897, was lodged with the United States District Court for the Northern District of Ohio. The complaint filed by the United States in this action alleged that Bedford had violated various effluent limitations and reporting requirements established in its National Pollutant Discharge Elimination System ("NPDES") permit. The complaint also alleged that Bedford had failed to comply with an administrative order directing the City to develop and implement a Municipal Compliance Plan ("MCP") specifying measures to be implemented by the City in order to assure attainment of the effluent limits in the Bedford's NPDES permit on or before July 1, 1988.

The proposed consent decree requires the Bedford to achieve and maintain compliance with the terms of the City's National Pollutant Discharge Elimination System permit and applicable provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.* and regulations promulgated thereunder. The proposed decree also provides for expeditious elimination of sanitary sewer system overflows and bypasses and requires the Bedford to develop and implement a plan for minimizing discharges from combined sewer overflows. Under the proposed decree, Bedford would pay a civil penalty of $27,500.

Under the proposed consent decree, the State would remain liable pursuant to Section 309(e) of the Clean Water Act, 33 U.S.C. 1319(e), if any State law were to prevent Bedford from raising revenues needed to comply with requirements of the decree.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC and should refer to *United States* v *City of Bedford, Ohio and the State of Ohio*, D.J. Ref. No. 90-5-1-1-2273

The proposed Consent Decree may be examined at the office of the United States Attorney, 1404 East Ninth Street, Suite 500, Cleveland, Ohio 44114 and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 111 West Jackson Street, Third Floor, Chicago, Illinois 60604. Copies of the proposed consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.10 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-12464 Filed 5-24-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging a Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; Nicolet, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 15, 1989, a Consent Decree in *United States* v. *Nicolet, Inc.*, Civil Action No. 85-3060, was lodged with the United States District Court for the Eastern District of Pennsylvania.

The United States' Complaint was filed under section 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") to seek reimbursement for the United States' response costs at the Ambler Asbestos Site in Ambler, Pennsylvania, and a declaratory judgment for its future response costs not inconsistent with the National Contingency Plan. The defendants are the present owner and operator of the Site, Nicolet, Inc., and T&N plc, the parent company of a former owner or operator of the Site.

The Consent Decree will resolve the United States' claims against Nicolet, Inc. Nicolet sought protection from its creditors under Chapter 11 of the Bankruptcy Code in July, 1987. Nicolet has since filed a proposed liquidating plan of reorganization with the United States Bankruptcy Court for the Eastern District of Pennsylvania. Nicolet seeks permission from the Bankruptcy Court to liquidate all of its assets to pay off creditors. The United States will seek to enforce the monetary terms of the Consent Decree in the Bankruptcy Court.

The Decree provides that Nicolet will pay $900,000 to the United States for deposit into the Hazardous Substances Superfund, in return for contribution protection, as provided for in section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2). Further, the United States has agreed to withdraw a lien, filed prior to Nicolet's entry into bankruptcy, against certain property owned by Nicolet.

The United States has incurred thus far approximately $2,500,000 in costs. It has expended these funds, *inter alia*, to perform a removal action at the Site, to investigate conditions at the Site for a long-term remedy, to have a Remedial Investigation/Feasibility Study performed, and in litigation costs. It is estimated that the United States may incur an additional $5,100,000 in costs for a long-term remedial action at the Site.

The case is scheduled for trial. Should the Court approve the Consent Decree prior to the commencement of trial, trial will proceed against T&N plc only.

The Department of Justice will receive for a period of thirty days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Nicolet, Inc.*, DOJ Ref. No. 90-11-3-84. The proposed Consent Decree may be examined at the office of the United States Attorney, Eastern District of Pennsylvania, Room 3310, United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division,

Department of Justice, Room 1517, Ninth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. Copying costs are $.10 per page. The Consent Decree is 23 pages long, thus a request for a copy of the Consent Decree must be accompanied with a check or money order made out to the Treasurer of the United States for $2.30.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-12465 Filed 5-21-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

Secretary of Labor's Committee on Veterans' Employment; Meeting

The Secretary's Committee on Veterans' Employment was established under section 2010, Title 38 U.S.C., as amended by Pub. L. 100-323 "Veterans Employment, Training and Counseling Amendments of 1988," to bring to the attention of the Secretary, problems and issues relating to veterans' employment.

Notice is hereby given that the Secretary of Labor's Committee on Veterans' Employment will meet on Thursday, June 15, 1989, at 2:00 p.m., in the Secretary's Conference Room, S-2508, FPB.

The primary agenda item is the Disabled Veterans Affirmative Action plan of the U.S. Department of Labor.

The public is invited to attend or submit comments.

Signed at Washington, DC this 18th day of May, 1989.

Donald E. Shasteen,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 89-12525 Filed 5-24-89; 8:45 am]

BILLING CODE 4510-79-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance udner Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 5, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 5, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 15th day of May 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
AT&T Information Systems (CWA)	Los Angeles, CA	5/15/89	4/24/89	22,911	Warehouse & Repair Shop Telecomm.
American District Telegraph (ADT) (IBEW)	Clifton, NJ	5/15/89	4/27/89	22,912	Electronic Security.
Brookfield Petroleum, Inc. (Workers & Company)	Tulsa, OK	5/15/89	4/26/89	22,913	Oil & Gas.
Calder Services Co. (Workers)	Farmington, NM	5/15/89	4/20/89	22,914	Do.
Colling Production (Workers)	Casper, WY	5/15/89	4/25/89	22,915	Do.
Data Log, Inc. (Company)	LaPlace, LA	5/15/89	4/26/89	22,916	Do.
Delta Metal Products (UAW)	Bay City, MT	5/15/89	4/24/89	22,917	Parts of Cars.
Deucalion Research (Workers)	Williston, ND	5/15/89	4/25/89	22,918	Ferro-Fluids.
Digitran, Inc. (Company)	Lafayette, LA	5/15/89	4/25/89	22,919	Oil & Gas.
Keystone Camera Corp. (IBTL)	Clifton, NJ	5/15/89	4/19/89	22,920	Camera Equipment.
Maidenform, Inc. (ILGWU)	Perth Amboy, NJ	5/15/89	4/25/89	22,921	Ladies Undergarments.
Marathon Oil Co. Welder Field (Workers)	Sinton, TX	5/15/89	4/28/89	22,922	Oil & Gas.
Marathon Oil Co. Welder Gas Plant (Workers)	Sinton, TX	5/15/89	4/28/89	22,923	Do.
McMarz Marble Inc.	Granbury, TX	5/15/89	4/21/89	22,924	Tubs & Wash Basins.
Mid-Continental Supply Co. (Workers)	Ft. Worth, TX	5/15/89	4/19/89	22,925	Oil & Gas.
Northwest Drilling (Workers)	Franklin, PA	5/15/89	5/1/89	22,926	Do.
Pool Co. (Workers)	San Angelo, TX	5/15/89	5/1/89	22,927	Do.
Production Plated Plastics (UAW)	Richland, MI	5/15/89	4/20/89	22,928	Plastic, Auto Parts, Computer Chassis, Furniture.
Revlon Implement Corp. (USWU)	Irvington, NJ	5/15/89	5/1/89	22,929	Tweezers, Nail Clippers & Scissors.
Rototec, Inc.	Odessa, TX	5/15/89	4/21/89	22,930	Pumps & Pump Parts.
Scown Enterprises, Inc. (Company)	Denver, CO	5/15/89	4/21/89	22,931	Oil & Gas.
Wells Mfg. Corp. (Workers)	Manning, IA	5/15/89	4/24/89	22,932	Auto Parts.

[FR Doc. 89-12523 Filed 5-24-89; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-89-59-C]

Powderhorn Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Powderhorn Coal Company, P.O. Box 1430, Palisade, Colorado 81526 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Roadside Mine (I.D. No. 05-00281) located in Mesa County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirements that an examination be made on a weekly basis of the return aircourse in its entirety.

2. Due to the roof conditions in the mine, traveling the entire return aircourse would result in a diminution of safety to the miners.

3. As an alternate method, petitioner proposes to establish evaluation points to monitor for hazardous conditions at five locations which are no longer accessible for inspection in their entirety.

4. In support of this request, petitioner states that—

(a) The evaluation points would be located just downwind of these inaccessible areas. Monitoring would consist of checking for methane and oxygen deficiency and checking for normal airflow; and

(b) Monitoring of these evaluations points would be done daily on coal producing days and as part of a weekly examination when not producing coal. A minimum of 15,000 CFM of air would be maintained through each of these inaccessible areas.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 26, 1989. Copies of the petition are available for inspection at that address.

Date: May 17, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-12521 Filed 5-24-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-61-C]

Sextet Mining Company, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Sextet Mining Company, Inc., 1822 North Main Street, Madisonville, Kentucky 42431 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its West Hopkins Mine (I.D. No. 15-15691) located in Hopkins County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return aircourses be separated from belt haulage entries and that belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to allow the belt entry air to be coursed across the working face after having first passed over the carbon monoxide (CO) detectors.

3. In support of this request, petitioner states that—

(a) At all times, the intake and return air entries would be isolated from the belt haulage entry;

(b) Allowing the belt entry air to ventilate the working face would provide the miner a quicker warning of fire or smoke on the belt haulage line; and

(c) Using belt entry air would increase the minimum quantity of air to the working face by approximately six to seven percent.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 26, 1989. Copies of the petition are available for inspection at that address.

Date: May 18, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-12522 Filed 5-24-89; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 89-40]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Microgravity Science and Applications Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Microgravity Science and Applications Advisory Subcommittee.

DATES: June 6, 1989, 8:30 a.m. to 5 p.m.

ADDRESSES: NASA Headquarters, Room 521-J, 600 Independence Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Roger K. Crouch, Code EN, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1490).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long range plans for, and work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Microgravity Science and Applications Advisory Subcommittee provides advice to the Microgravity Science and Applications Division concerning all of its programs in the microgravity sciences. The Subcommittee will meet to review the charge of the subcommittee and discuss issues to be addressed by the subcommittee at future meetings. The Subcommittee is chaired by Dr. Robert Schrieffer and is composed of 6 members. The meeting will be open to the public up to the capacity of the room (approximately 15 including Subcommittee members). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Type of Meeting: Open.

Agenda:

Tuesday, June 6

8:30 a.m.—Introduction and Review of Charge of Subcommittee.

9 a.m.—Discussion of Critical Issues to be Studied by the Subcommittee including: review of procedures for judging grant proposals and continuing grants, role of working groups, balance of funding of hardware versus research grants, balance of science versus applications in the Microgravity Science and Applications Division, support of long term large scale projects, methods for stimulating interest in submitting high quality proposals in the microgravity area, coupling to international efforts in microgravity science and applications.

4:30 p.m.—Mode of operation of the subcommittee and scheduling of future meetings.

5 p.m.—Adjourn.

May 19, 1989.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89-12517 Filed 5-24-89; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by June 26, 1989.

ADDRESSES: Send comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202-682-5401).

FOR FURTHER INFORMATION CONTACT: Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests a review of a new collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.S. 3504(h).

Title: Expansion Arts/Inter-Arts Organizational Development Pilot Application Guidelines.

Frequency of Collection: One-time.

Respondents: Non-profit institutions.

Use: Guideline instructions and applications elicit relevant information from non-profit organizations that apply for funding under specific program categories. This information is necessary for the accurate, fair, and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 30.

Average Burden Hours per Response: 40.

Total Estimated Burden: 1,200.

Anne C. Doyle,

Administrative Services Division, National Endowment for the Arts.

[FR Doc. 89-12535 Filed 5-24-89; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold a meeting on June 13, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, MD. Notice of this meeting was published in the **Federal Register** on May 17, 1989 (54 FR 21295). The following topics will be discussed:

Tuesday, June 13, 1989—8:30 a.m.-5:00 p.m. (Open)

- NRC staff's draft of the Site Characterization Analysis (SCA).
- Committee Activities: Future meeting agenda, and organizational matters, as appropriate.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. The Office of the ACRS is providing Staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the Office of the ACRS as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the Office of the ACRS, Mr. Raymond F. Fraley (telephone 301/492-4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

Dated: May 18, 1989.

Samuel J. Chilk,

Acting Advisory Committee Management Officer.

[FR Doc. 89-12457 Filed 5-24-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on June 8-10, 1989 in Room P-110, 7920 Norfolk Avenue, Bethesda, Md. Notice of this meeting was published in the **Federal Register** on May 17, 1989.

Thursday, June 8, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, Md.

8.30 a.m.-8:45 a.m.: Comments by ACRS Chairman (Open). The ACRS Chairman will report on items of current interest.

8:45 a.m.-11:00 a.m.: NRC Performance Indicator Program (Open). Briefing by representatives of NRC staff regarding development and use of performance indicators to evaluate the operation of licensed nuclear power plants.

11:15 a.m.-12:00 Noon: Preparation of ACRS Reports (Open). Discuss ACRS

reports to NRC regarding the status of the implementation of corrective action regarding ATWS and the scope of ACRS responsibilities.

1:00 p.m.–2:30 p.m.: LaSalle County Station, Unit 2 (Open). The Committee will review and comment on proposed resolution of the BWR core power oscillation event which occurred at this plant.

2:45 p.m.–4:15 p.m.: Service Water Systems (Open). The Committee will review and comment on a proposed NRC generic letter regarding service water system problems affecting safety-related equipment, and other related matters.

4:15 p.m.–5:00 p.m.: USI A–47, Safety Implications of Control Systems (Open). The Committee will review and report regarding proposed final resolution of this unresolved safety issue.

5:00 p.m.–5:30 p.m.: Future ACRS Activities (Open). Discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full committee.

Friday, June 9, 1989, Room P–110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 a.m.–10:30 a.m.: General Electric Company Advanced Boiling Water Reactor (Open). A briefing and discussion will be held regarding design features of this advanced reactor to address NRC severe accident policy considerations.

10:45 a.m.–12:00 Noon: USI A–17, Systems Interactions (Open). The Committee will review and report on proposed final resolution of this unresolved safety issue.

1:00 p.m.–3:00 p.m.: Thermal-Hydraulic Research Program (Open). The Committee will review and report on the proposed NRC thermal-hydraulic research program to resolve issues of regulatory concern.

3:15 p.m.–5:15 p.m.: Education Requirements and Experience for Nuclear Power Plant Senior Operators and Control Room Supervisors (Open). Discuss and report on a proposed Commission policy statement regarding education and experience requirements for nuclear power plant Senior Operators and Control Room Supervisors.

5:15 p.m.–6:15 p.m.: ACRS Subcommittee Activities (Open). The Committee will hear and discuss reports of ACRS subcommittee chairmen regarding designated subcommittee activities and related events including the International Conference on Quality Assurance, the results of the human factor spin-off study from the Chernobyl nuclear plant accident, and AC/DC power systems reliability.

Saturday, June 10, 1989

8:30 a.m.–12:00 Noon: Preparation of ACRS Reports to NRC (Open). The Committee will discuss proposed ACRS reports to NRC regarding items considered during this meeting.

1:00 p.m.–1:30 p.m.: Nomination of ACRS Members (Open/Closed). The Committee will discuss qualifications of candidates proposed for nomination as members of the ACRS.

Portions of this session will be closed as required to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

1:30 p.m.–3:00 p.m.: Miscellaneous (Open). The Committee will complete discussion of items considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 27, 1988 (53 FR 43487). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492–8049), between 8:15 a.m. and 5:00 p.m.

Date: May 18, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89–12458 Filed 5–24–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–255]

Consumers Power Co.; Withdrawal of Application for Amendment to Provisional Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Consumers Power Company (the licensee) to withdraw its February 5, 1985 application (as supplemented by letter dated November 21, 1985 and March 9, 1987) for proposed amendment to Provisional Operating License No. DPR–20 for the Palisades Plant, located in Van Buren County, Michigan.

The proposed change would have modified the Appendix A Technical Specifications (TSs) pertaining to fire protection systems. Specifically, the proposed changes would have modified Limiting Conditions for Operation for Fire Protection Water Systems, Fire Sprinkler Systems, Hose Stations, and Fire-Rated Fire Protection Assemblies and Surveillance Requirements for Fire Sprinkler Systems and Fire-Rated Fire Protection Assemblies.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 21, 1985 (50 FR 20975). However, by letter dated March 23, 1989, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated February 5, 1985, letters dated November 21, 1985 and March 9, 1987, and the licensee's letter dated March 23, 1989, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and the Van Zoeren Library, Hope College, Holland, Michigan 49201.

Dated at Rockville, Maryland this 19th day of May.

For the Nuclear Regulatory Commission.

Albert W. De Agazio,

Senior Project Manager, Project Directorate III–1, Division of Reactor Projects–III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–12524 Filed 5–24–89; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Employee's Certification.

(2) *Form(s) submitted:* G–346.

(3) *OMB Number:* 3220–0140.

(4) *Expiration date of current OMB clearance:* 8–31–89.

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households.

(8) *Estimated annual number of respondents:* 18,000.

(9) *Total annual responses:* 18,000.

(10) *Average time per response:* .08333 hours.

(11) *Total annual reporting hours:* 1,500.

(12) *Collection description:* The collection obtains from the employee information about the employee's previous marriages, if any, to determine if any impediment exists to the marriage between the employee and his or her spouse.

Additional Information or Comments

Copies of the proposed forms and supporting documents can be obtained from Ronald Ritter, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Ronald Ritter, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Justin Kopca (202–395–7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Ronald Ritter,

Acting Director of Information, Resources Management.

[FR Doc. 89–12467 Filed 5–24–89; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–26834; File No. AMEX–89–10]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Bid/Ask Differentials and the Responsibility to Make Ten-Up Markets

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 3, 1989, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Italics indicate material to be added; [brackets] indicates material proposed to be deleted.

Rule 950—Rules of General Applicability

(a) the following Floor Rules shall apply to Exchange options transactions and other transactions on the Exchange in option contracts: 100, 101, 103, 104, 105, 106, 109, 110, 112, 117, 123, 130, 135, 150, 151, 152, 155, 157, [170,] 172, 173, 174, 175, 176, 177, 180, 181, 183, 184, 185, 192, and 193. Unless the context otherwise requires the term "stock" wherever used in the foregoing Rules shall be deemed to include option contracts. Except as otherwise provided in this Rule, all other Floor Rules (series 100 et seq.) shall not be applicable to Exchange options transactions.

(b)–(m) No change.

(n) The provisions of Rule 170 and Commentaries .03 and .04 thereto, shall apply to exchange option transactions. In addition, the following Commentary shall also apply:

Commentary

.10 A specialist in the course of maintaining a fair and orderly market shall adhere to the maximum permissible bid/ask differentials set forth in Rule 958(c).

Rule 958—Options Transactions of Registered Traders

No Registered Trader shall initiate an Exchange option transaction on the Floor for any account in which he has an interest except in accordance with the following provisions:

(a)–(b) No change.

(c) With respect to each class of options as to which he is assigned by the Exchange, a Registered Trader, whenever he enters the trading crowd in other than a floor brokerage capacity, or is called upon by a Floor Official or a Floor Broker acting in an agency capacity, is required to make competitive bids and offers as reasonably necessary to contribute to the maintenance of a fair and orderly market and shall engage, to a reasonable degree under the existing circumstances, in dealings for his own account when there exists a lack of price continuity, a temporary disparity between the supply and demand for option contracts of a particular series, or a temporary distortion of the price relationships between option contracts of the same class. Without limiting the foregoing, a Registered Trader is expected to perform the following activities in the course of maintaining a fair and orderly market:

(i) If the underlying security is a stock, bidding and offering so as to create differences of no more than ¼ of $1 between the bid and the offer for each option contract for which the prevailing bid is [$1 or less] *less than $2,* no more than ⅜ of $1 where the prevailing bid is [more than $1] *$2* but does not exceed $5, no more than ½ of $1 where the prevailing bid is more than $5 but does not exceed $10, no more than ¾ of $1 where the prevailing bid is more than $10 but less than $20, and no more than $1 where the prevailing bid is *more than $20* [or more;]. *In the event the bid/ask differential in the underlying security is greater than the bid/ask differential set forth herein, the permissible price differential for any in-the-money option series may be identical to those in the underlying security market.*

If the underlying security is a Treasury bill or certificate of deposit, bidding and offering so as to create differences in premium quotations of no more than 0.06 between the bid and the offer for each option contract for which the last preceding transaction price was 0.12 or less, no more than 0.12 where the last preceding transaction price was more than 0.12 but did not exceed 1.20,

and no more than 0.16 where the last preceding transaction price was more than 1.20; and

If the underlying security is a Treasury bond or Treasury note, bidding and offering so as to create differences of no more than ⅛% of the principal amount of the underlying security between the bid and the offer for each option contract for which the last preceding transaction price was ¼% or less, no more than ¼% where the last preceding transaction price was more than ¼% but did not exceed 4%, and no more than ⅜% where the last preceding transaction price was more than 4%.

Provided that the Exchange may establish differences other than the above for one or more series or classes of options.

(ii) No change.

(d)–(g) No change.

Rule 958A—Specialist Options Transactions

(a) At all times other than during rotation, a specialist is required to sell (buy) at least ten (10) contracts at the offer (bid) which is displayed on a reasonably current basis as determined by market conditions when a buy (sell) order reaches the trading post where the option class is located for trading. A Floor Official may determine on a case by case basis that an exception to the rule is warranted for, among other things, an obvious error occurring in the posting of the displayed market quote due to reporter errors or system malfunctions.

(b) Only non-broker dealer customer orders shall be entitled to executions pursuant to the provisions of this rule.

(c) This rule shall only apply to option series which expire during the two nearest term months.

(d) Specialists are not required to display as a market quotation bids or offers of a Registered Option Trader for less than 10 contracts.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the Proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Amendment to Rule 958(c)

The proposed rule change involves the tightening of markets by narrowing the maximum differences between bids and offers. This amendment to Rule 958 would, among other things, tighten markets for options series where the prevailing bid/offer is less than $2 such that the prevailing bid/offer differential may not exceed ¼ of $1. Since options in this price range are favored by a significant number of public investors, the narrowing of this bid/ask differential should result in improved price continuity and more liquid markets. In addition, the proposed amendment further provides that in connection with in-the-money series in which the quote differential in the underlying security is greater than the price parameters specified in Rule 958, the permissible price differential for the respective options series may be identical to those in the underlying security market. Certain other technical changes are being proposed to effect conformity between AMEX and the Chicago Board Options Exchange ("CBOE") rules and thus avoid member and investor confusion.

Amendment to Rule 950(h)

This proposed amendment rule will codify the Exchange's long existing policy of applying to specialist's market making activities the maximum permissible bid/ask differentials applicable to Registered Options Traders as set forth in Rule 958(c).

New Rule 958 A

This proposed new rule would require specialists to make ten-up markets so that public customer orders are filled to a minimum of ten contracts at the bid or offer displayed on the specialist's screen when the order reaches the specialist's post. This responsibility will apply to all options series expiring in the two nearest term months. The Amex believes that the proposed rule change will protect investors and promote the public interest by assuring a minimum ten contract execution of public customer orders at the displayed bid or offer.

The Proposed rule changes are consistent with section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Options Committee, a committee of the AMEX Board of Governors comprised of members and representatives of member firms, has endorsed the proposed rule change.

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by June 15, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 18, 1989.
Shirley E. Hollis,
Assistant Secretary.
[FR Doc. 89-12471 Filed 5-24-89; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. 34-26835; File No. SR-Phlx-89-15]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Filing of Proposed Rule Change Relating to Openings of Trading When the Primary Market Is Subject to a Non-Regulatory Trading Halt

Pursuant to section 19(b)(1), 15 U.S.C. 78s(b)(1), of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, 17 CFR 240.19b-4, notice is hereby given that on April 3, 1989, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to Commission Rule 19b-4, the Exchange hereby proposes to adopt a new rule, PHLX Rule 230: Criteria Applicable to PHLX Openings in Stocks for Which the NYSE or AMEX is the Primary Market. Additionally, the PHLX proposes to adopt three equity floor procedure advices pursuant to PHLX Rule 970 in order to enforce the provisions of the proposed rule. The text of the proposed rule change and equity floor procedure advices that follow constitutes all new material.

Rule 230

(a) The criteria set forth herein shall only apply to instances in which a secondary market opens a security for trading at a price requiring an ITS Pre-opening notification, the primary market for which is the NYSE or AMEX, prior to the opening of the security for trading on the NYSE or the AMEX.

(b) The specialist may not open a stock unless such opening is approved by two floor officials. (The approval of the floor official shall be applicable to the act of opening a stock prior to the NYSE or AMEX and not to the price of the opening sale(s).)

(c) In the case of a stock which is traded through the Intermarket Trading System ("ITS"), the specialist shall send or cause to be sent (a) a tape indication through the CTS high speed line and (b) an ITS Pre-opening notification.

(d) The criteria set forth herein shall only apply to orders delivered to the specialist by means other than the PACE system. (Orders delivered to the specialist by means of the PACE system shall be executed when they become eligible for execution at or following the NYSE or AMEX opening, as appropriate.)

(e) All orders, other than those delivered to the specialist through the PACE system, must be protected and identified as eligible for a PHLX opening. A specially designated order ticket shall be left with the specialist for orders eligible to be executed on an opening other than that of the NYSE and AMEX. Unless the specifically designated order ticket is used, an order will not be eligible for execution until the primary market is opened for trading.

Equity Floor Procedure Advice

ES-1 *Floor Official Approval Required To Initiate Pre-Opening Application.* A specialist must obtain the approval of two floor officials prior to (i) issuing a pre-opening notification or (ii) executing one or more transactions on the Exchange in any ITS stock that is not at the time open for trading on the primary exchange.

When requested by two floor officials to commence an opening in an Exchange issue, a specialist must either apply appropriate steps to open trading in the requested issue or furnish reasonable grounds to not open trading in that issue.

Fine Schedule (Violations compound only when they occur within three years of each other):

1st Occurrence: $100.00.
2nd Occurrence: $500.00.
3rd and Thereafter: Sanction is Discretionary with Business Conduct Committee.

Equity Floor Procedure Advice

ES-2 *Distinguishing Orders for Execution in Instances Where the Primary Market Is Not Open in an Issue for Which the PHLX Is Open.* The specialist shall ensure that orders on the book designated for PHLX execution price protection for periods when the primary market is not open receive such price protection in any instance where the PHLX is open for trading in an issue not open on the primary market. The specialist shall also ensure that all orders not so designated and orders received through the PACE system only become eligible for execution while the primary market is open for trading. At this time, orders are designated for execution when the PHLX is open for trading in an issue not open on the primary market by use of the yellow copy of the order ticket.

Fine Schedule (Violations compound only when they occur within three years of each other):

1st Occurrence: $100.00.
2nd Occurrence: $250.00.
3rd and Thereafter: Sanction is Discretionary with Business Conduct Committee.

Equity Floor Procedure Advice

EF-1 *Designating Orders for Execution in Instances Where the Primary Market Is Not Open in an Issue for Which the PHLX is Open.* Orders that are so designated shall be eligible for executing during those periods when the PHLX is open for trading in an issue not open on the primary market. At this time, orders are designated for execution when the PHLX is open for trading in an issue not open on the primary market by use of the yellow copy of the order ticket. All orders not specially designated shall only become eligible for execution while the primary market is open for trading.

Orders received through the PACE system are not eligible for execution unless the primary market is open for trading.

Fine Schedule (Violations compound only when they occur within three years of each other):

1st Occurrence: $100.00.
2nd Occurrence: $250.00.
3rd and Thereafter: Sanction is Discretionary with Business Conduct Committee.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

The purpose of the proposed rule change is to clarify the procedures to be followed in situations in which there is

interest in having the PHLX open a security for trading when the New York Stock Exchange ("NYSE") or the American Stock Exchange ("AMEX") are not opened for trading. Various segments of exchange membership including upstairs retail firms, PHLX floor brokers and specialists have expressed the need for guidance on the opening of stocks on the PHLX in situations in which a non-regulatory (*e.g.*, order imbalance) halt is in effect for a stock on the NYSE or AMEX. The proposed rule change provides that a specialist may not open a stock before the primary maket is open unless approved to do so by two floor officials. Upon application, two floor officials can also require that a stock be open in such circumstances over the objection of the specialist, although considerable deference is owed to the recommendation and interests of the specialist concerning opening the stock.

For stocks traded over the Intermarket Trading System ("ITS"), the specialist is required to send a tape indication over the Consolidated Trading System and an ITS Pre-opening notification.

The proposal provides that orders specially designated for execution prior to the primary market opening shall be eligible for execution when PHLX is open in an issue in which the NYSE or AMEX has not opened for trading. All other orders (*i.e.*, orders not specially designated) are eligible for execution only after the primary market has opened. Similarly, pursuant to PHLX Rule 229, all PACE orders are eligible for execution only after the primary market is opened.

Additionally, the proposed rule change includes adoption of three equity floor procedure advices that would be used to enforce the provisions of proposed rule 230. The proposed rule change is consistent with section 6(b)(5) of the Act in that it will promote just and equitable principles of trade, protect investors and promote the public interest by establishing procedures for the fair and orderly opening of trading in securities at a time when the primary market remains closed due to a non-regulatory purpose. Moreover, the proposal is consistent with section 11A(a)(1)(C)(ii) of the Act in that it promotes "fair competition among . . . exchange markets" in providing liquidity and a marketplace for trading at times when the primary market is halted for trading for non-regulatory purposes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements addressing the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 15, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 18, 1989.

Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 89-12472 Filed 5-24-89; 8:45 am]
BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Areas #6759, #6760 & #6761]

Nebraska; (And Contiguous Counties in the States of Kansas & Missouri); Declaration of Disaster Loan Area

Falls City, Richardson County, and the contiguous counties of Nemaha and Pawnee, in the State of Nebraska; Nemaha, Brown and Doniphan Counties, in the State of Kansas; and Atchison and Holt Counties, in the State of Missouri, constitute an Economic Injury Disaster Loan Area due to damages resulting from a fire which occurred in Falls City on April 30 and May 1, 1989. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on February 20, 1990 at the address listed below: Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, TX 75051, or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The numbers assigned to this declaration for economic injury are #675900 for the State of Nebraska; #6760 for the State of Kansas; and #6761 for the State of Missouri.

(Catalog of Federal Domestic Assistance Program No. 59002)

Date: May 17, 1989.

Susan S. Engeleiter,
Administrator.

[FR Doc. 89-12489 Filed 5-24-89; 8:45 am]
BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD-89-043]

Public Hearing on the Burlington Northern Railroad Bridge Across the Upper Mississippi River, Mile 403.1 at Burlington, IA

AGENCY: Coast Guard, DOT.

ACTION: Notice of public hearing.

SUMMARY: The U.S. Coast Guard announces a forthcoming public hearing for the presentation of views concerning the alteration of the Burlington Northern Railroad Bridge.

DATE: The hearing will be held at 7:00 p.m., Wednesday, July 12, 1989.

ADDRESS: The hearing will be held in the Executive Conference Room of the Best Western Motor Inn, 3001 Winegard Drive, Burlington, Iowa 52601.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Wiebusch, Second Coast Guard District, 1430 Olive Street, St. Louis, Missouri 63103–2398, (314) 425–4607.

SUPPLEMENTARY INFORMATION: Complaints have been received alleging that the bridge is unreasonably obstructive to navigation. Information available to the Coast Guard indicates there were 168 marine collisions with the bridge since 1977. These collisions have caused moderate to heavy damage to the birdge. Based on this information, the bridge appears to be an unreasonable obstruction to navigation. This may require increasing the horizontal clearance of the bridge to meet the needs of navigation. All interested parties shall have full opportunity to be heard and to present evidence as to whether any alteration of this bridge is needed, and if so, what alterations are needed giving due consideration to the needs of navigation and the needs of rail traffic.

Any person who wishes, may appear and be heard at the public hearing. Persons planning to speak are requested to notify the Commander, Second Coast Guard District 1430 Olive Street, St. Louis, Missouri 63103–2398, telephone 314–425–4607, any time prior to the hearing indicating the amount of time required. Depending upon the number of scheduled statements, it may be necessary to limit the time allocated to each person. Any limitations of time will be announced at the beginning of the hearing. Written statements and exhibits may be submitted in place of or in addition to oral statements and will be made part of the hearing record. Such written statements and exhibits may be delivered at the hearing or mailed in advance to the Commander, Second Coast Guard District. Transcripts of the hearing will be made available for purchase upon request.

(33 U.S.C. 513; 33 CFR 116.20)

Dated: May 22, 1989.

Robert T. Nelson,

Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 89–12564 Filed 5–24–89; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Radio Technical Commission for Aeronautics Special Committee 159 on Minimum Aviation System Performance Standard for GPS; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given for the twelfth meeting of Radio Technical Commission for Aeronautics (RTCA) Special Committee 159 on Minimum Aviation System Performance Standard for GPS to be held June 15–16, 1989, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) approval of the minutes of the eleventh meeting, RTCA Paper No. 112–89/SC159–202; (3) review of the Revised Terms of Reference, RTCA Paper No. XXX–89/SC159–XXX; (4) reports of working group activities on integrity implementation, operations, and test requirements; (5) FAA briefing on ICAO FANS working group activities; (6) briefing on INMARSAT/European Space Agency proposed development of a multiuser international civil satellite navigation capability; (7) assignment of tasks; (8) other business; and (9) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 17, 1989.

Geoffrey R. McIntyre,

Designated Officer.

[FR Doc. 89–12507 Filed 5–24–89; 8:45 am]

BILLING CODE 4910–13–M

Research, Engineering, and Development Conference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of conference.

SUMMARY: The Federal Aviation Administration (FAA) will hold a conference for the purpose of obtaining recommendations from the aviation community on its Research, Engineering, and Development (R,E&D) Plan.

Date, Time, and Place: September 27 and 28, 1989, 9:00 a.m. to 5:00 p.m., Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, Virginia 22202.

Registration Fee: $50.00. Registered participants will receive a draft copy of the next R,E&D Plan in advance of the conference.

Agenda: The conference will employ industry panels followed by open discussion periods. Panels will be conducted sequentially on aviation safety, capacity, security, and on definition of the future aviation system.

FOR FURTHER INFORMATION CONTACT: To receive agenda and registration information, send name, title, organization, and mailing address to: Federal Aviation Administration, Research and Development Management Control Division, AMC–200, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–3063.

Date: May 17, 1989.

James W. Rogers,

Acting Manager, Research & Development, Management & Control Division, AMC–200.

[FR Doc. 89–12508 Filed 5–24–89; 8:45 am]

BILLING CODE 4910–13–M

Maritime Administration

Approval of Applicant as Trustee; NCNB Texas National Bank

Notice is hereby given that NCNB Texas National Bank, P.O. Box 830500, Dallas, Texas 75283–0500, has been approved as Trustee pursuant to Pub. L. 100–710 and 46 CFR Part 221.

Dated: May 18, 1989.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 89–12461 Filed 5–24–89; 8:45 am]

BILLING CODE 4910–81–M

National Highway Traffic Safety Administration

Discretionary Cooperative Agreement to Support Research in the Development of Estimates of Functional Impairment Resulting from Injuries Sustained in Motor Vehicle Crashes

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Extension of due date for receipt of applications.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces an extension in the due date for receipt of applications for a discretionary cooperative agreement program to support research in the development of estimates of functional impairment.

DATE: Applications must be received on or before June 26, 1989.

ADDRESS: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), 400 7th Street SW., Room 5301, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Questions relating to this cooperative agreement program should be directed to Stephen Luchter, Chief, Planning and Policy Development Division, (NPP–32), National Highway Traffic Safety Administration, 400 7th St. SW., Room 5208, Washington, DC 20590; (202) 366–2576.

SUPPLEMENTARY INFORMATION: The agency published a request for applications for a discretionary cooperative agreement program to support research in the development of estimates of functional impairment on April 13, 1989. Numerous requests have been received to extend the due date for applications for this program. The agency has decided to honor these requests, and has therefore extended the due date to June 26, 1989. All other aspects of the prior notice remain valid.

Issued on: April 18, 1989.

Adele Derby,

Associate Administrator for Plans and Policy.

[FR Doc. 89–12460 Filed 5–24–89; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: May 19, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0157.
Form Number: None.
Type of Review: Revision.
Title: Exportation of Used Self-Propelled Vehicles.
Description: The information collection requires the submission of documents verifying ownership of exporters for importation/exportation of vehicles in the United States
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 2,000.
Estimated Burden Hours Per Response/Recordkeeping: 2 hours 45 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping/ Reporting Burden: 80,500 hours.
Clearance Officer: Dennis Dore, (202) 535–9267, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89–12554 Filed 5–24–89; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: May 19, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0214.
Form Number: ATF F 5110.74.
Type of Review: Revision.
Title: Application and Permit Under 26 U.S.C. 5181—Alcohol Fuel Producer.

Description: This form is used by persons who wish to produce and receive spirits for the production of alcohol fuels as a business or for their own use and for State and local registration where required. The form describes the person(s) applying for the permit, location of the proposed operation, type of permit, location of the proposed operation, type of material used for production and amount of spirits to be produced.

Estimated Number of Respondents: 2,696.
Estimated Burden Hours Per Response: 1 hour 48 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 4,853 hours.

Clearance Officer: Robert Masarsky (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89–12555 Filed 5–24–89; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 100
Thursday, May 25, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:01 p.m. on Friday, May 19, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider: (1) A recommendation regarding administrative enforcement proceedings against an insured bank; (2) matters relating to the possible closing of a certain insured bank; and (3) a matter relating to the Corporation's assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act with an insured bank.

In calling the meeting, the Board determined, on motion of Mr. J. Michael Shepherd, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), seconded by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: May 22, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-12616 Filed 5-23-89; 8:53 am]

BILLING CODE 6714-01-M

INTERNATIONAL TRADE COMMISSION

[USITC SE-89-20]

TIME AND DATE: Thursday, June 1, 1989 at 10:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints:
   a. Certain Food Treatment Ovens, Components, Parts Thereof and Processes Carried Out Therein (D/N 1506).
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

May 18, 1989.

Kenneth R. Mason,

Secretary

[FR Doc. 89-12651 Filed 5-23-89; 12:48 pm]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Parole Commission

Public Announcement

Pursuant To The Government In the Sunshine Act (Pub. L. 94-409) [5 U.S.C. 552b]

"FEDERAL REGISTER" CITATION PREVIOUS ANNOUNCEMENT: 54 FR 21162, Tuesday, May 16, 1989.

PREVIOUSLY ANNOUNCED TIME AND DATE: Tuesday, May 30, 1989, 9:00 a.m. to 2:00 p.m., Eastern Standard Time.

CHANGES IN MEETING: Wednesday, May 31, 1989, 9:00 a.m. to 2:00 p.m., Eastern Standard Time.

CONTACT FOR MORE INFORMATION: Linda Wines Marble, Director, Case Operations and Program Development, United States Parole Commission (301) 492-5952.

May 22, 1989.

Rockne J. Chickinell,

Deputy General Counsel, U.S. Parole Commission.

[FR Doc. 89-12624 Filed 5-23-89; 10:06 am]

BILLING CODE 4410-01-M

DEPARTMENT OF JUSTICE

Parole Commission

Public Announcement

Pursuant To The Government In the Sunshine Act
(Pub. L. 94-409) [5 U.S.C. 552b]

"FEDERAL REGISTER" CITATION PREVIOUS ANNOUNCEMENT: 54 FR 21162, Tuesday, May 16, 1989.

PREVIOUSLY ANNOUNCED TIME AND DATE: Tuesday, May 30, 1989, 2:00 p.m., Eastern Standard Time.

CHANGES IN MEETING: Wednesday, May 31, 1989, 2:00 p.m., Eastern Standard Time.

CONTACT FOR MORE INFORMATION: Linda Wines Marble, Director, Case Operations and Program Development, United States Parole Commission (303) 492-5952.

Rockne J. Chickinell,

Deputy General Counsel, U.S. Parole Commission.

May 22, 1989.

[FR Doc. 89-12625 Filed 5-23-89; 10:06 am]

BILLING CODE 4410-01-M

POSTAL SERVICE

Board of Governors

Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 8:00 a.m. on Tuesday, June 6, 1989, at the U.S. Postal Service Field Division Office, 2970 Market Street, Philadlphia, Pennsylvania, in Conference Room 555. The meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

There will also be a session of the Board on Monday, June 5, 1989, but it will consist entirely of briefings and is not open to the public.

Agenda

Tuesday Session

June 6—8:00 a.m. (open)

1. Minutes of the Previous Meeting, May 1-2, 1989.
2. Remarks of the Postmaster General.
3. Report on Finance Group Programs. (Comer S. Coppie, Senior Assistant Postmaster General, Finance Group)
4. Report on EEO/Affirmative Action Programs in the Philadelphia Division. (Charles J. James, Philadelphia Field Division General Manager/Postmaster)
5. Capital Investments:
   a. San Diego, California, General Mail Facility and Auxiliary Vehicle Maintenance Facility. (Stanley W. Smith, Assistant Postmaster General, Facilities Department)
   b. Flat Sorting Machines. (Peter A. Jacobson, Assistant Postmaster General, Engineering and Technical Suppport Department)
6. Tentative Agenda for July 10-11, 1989, meeting in Washington, DC.

David F. Harris,

Secretary.

[FR Doc. 89-12662 Filed 5-23-89; 2:10 pm]

BILLING CODE 7710-12-M

Corrections

Federal Register
Vol. 54, No. 100
Thursday, May 25, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

[FV-88-206]

United States Standards for Grades of Pickles

Correction

In proposed rule document 89-11147 beginning on page 20133 in the issue of Wednesday, May 10, 1989, make the following corrections:

§ 52.1691 [Corrected]

1. On page 20140, in Table VIII, in the first column, in the third entry, "EVN" should read "EVM".

2. On the same page, in the same table, in footnote 1, "Connect" should read "Cannot".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[PF-516;FRL-3554-51]

Ciba-Geigy Corp.; Amended Pesticide Petition

Correction

In notice document 89-8820 beginning on page 15802 in the issue of Wednesday, April 19, 1989, make the following corrections:

1. On page 15803, in the 1st column, under **ADDRESS**, in the 3rd paragraph, in the 8th line, "409" should read "40"; in the 14th line, "without" was misspelled; and in the 18th line, "excluding" was misspelled.

2. On the same page, in the same column, under **FOR FURTHER INFORMATION CONTACT**, in the second paragraph, in the last line, "557-1990" should read "557-1900".

3. On the same page, in the same column, under **SUPPLEMENTARY INFORMATION**, in the second paragraph, in the first line, "originally" was misspelled.

4. On the same page, in the second column, the third and fourth lines should read "**Federal Register** of March 15, 1989 (54 FR 10715)."

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51731; FRL-3567-2]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

Correction

In notice document 89-10720 beginning on page 19232 in the issue of Thursday, May 4, 1989, make the following corrections:

1. On page 19233, in the first column, the second "**P 89-490**" should read "**89-492**"; and under that entry, in the paragraph headed "*Use/Production*", in the third line, "318,000,800,000" should read "318,000-800,000".

2. On the same page, in the second column, "**P89-490**" should read **P89-500**".

3. On the same page, in the same column, under "**P89-501**", in the line biginning "*Chemical*", "Alkylarly" should read "Alkylaryl".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89N-0165]

Animal Drug Export; Yohimbine Injectable

Correction

In notice document 89-11380 appearing on page 20642 in the issue of Friday, May 12, 1989, make the following correction:

On page 20642, in the second column, under **FOR FURTHER INFORMATION CONTACT**, in the second line, "HFC" should read "HFA".

BILLING CODE 1505-01-D

federal register

Thursday
May 25, 1989

Part II

Environmental Protection Agency

40 CFR Part 86

Certification Programs for Banking and Trading of Oxides of Nitrogen and Particulate Emission Credits for Heavy-Duty Engines; Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL-3445-2]

Certification Programs for Banking and Trading of Oxides of Nitrogen and Particulate Emission Credits for Heavy-Duty Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing new certification programs for banking and trading of oxides of nitrogen and particulate emission credits for diesel-, gasoline-, and methanol-fueled heavy-duty engines. Banking would be effective for the 1990 model year while trading would be effective for the 1991 model year. Also as part of this action, EPA is proposing to expand the heavy-duty engine emissions averaging program to take effect beginning in the 1991 model year to make it consistent in scope with the program proposed for banking and trading. No changes are being proposed for the existing oxides of nitrogen and particulate matter emission standards for these engines. However, EPA is proposing a ceiling value for particulate emissions standard family emission limits from urban buses under emissions banking, trading, and averaging.

Implementation of this proposal should help to reduce the cost of controlling oxides of nitrogen and particulate emissions from heavy-duty engines without increasing total ambient levels of these pollutants. This proposal would also encourage the development and use of new emission control technology and lower emitting alternative fuels in heavy-duty engines, which could lead to lower emissions from future engines.

DATES: *Public Hearing:* EPA will conduct a public hearing on this proposal beginning at 9:00 a.m. on June 27, 1989. The hearing will continue throughout the day until all testimony has been presented. Comments on the proposal will be accepted for 30 days following conclusion of the hearing. Comments must be submitted by July 27, 1989. Additional information on the public hearing and the submission of comments can be found under "Public Participation" in the Supplementary Information Section of this Notice.

ADDRESSES: The public hearing will be held in the conference rooms at the EPA Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan. Interested parties may send written comments to: Public Docket A-87-03, Central Docket Section, U.S. Environmental Protection Agency, Room 4, South Conference Center (LE-131), 401 M Street, SW., Washington, DC 20460. If possible, a copy of the written comments should also be submitted to the EPA contact listed below.

Copies of materials relevant to this rulemaking are contained in Public Docket A-87-03 at the Central Docket Section of the U.S. Environmental Protection Agency, at the address given above. Docket material is available for review between the hours of 8:00 a.m. and 3:00 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Mrs. Angela Lindner, Emission Control Technology Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668-4504.

SUPPLEMENTARY INFORMATION:

I. Extended Summary

A. The Banking and Trading Concepts

EPA is proposing certification banking and trading programs as a method to reduce the cost of controlling heavy-duty engine (HDE) oxides of nitrogen (NO_x) and particulate matter (PM) emissions while still maintaining the same total level of emission control in-use. The banking and trading programs would create the opportunity for these cost reductions by allowing HDE manufacturers to trade (*e.g.*, buy/sell) NO_x and PM emission credits within a model year or to bank credits for use in future model years. Industry-wide costs could be reduced since manufacturers can optimize their marginal costs of compliance across the industry as a whole or across model years. The economic incentives created by banking and trading programs would also act to promote the development and use of improved emission control technologies and the development and sale of HDEs using alternative fuels. To understand these proposed changes, a brief review of certification procedures may be helpful.

Historically, EPA set HDE emission standards that required that each of a manufacturer's HDE families be certified to emit at or below the emission standards. In a Federal Register notice dated March 15, 1985 (50 FR 10606), EPA promulgated NO_x and PM standards for 1991 and later model year HDEs that allow HDE manufacturers to average the emission levels for these pollutants between or among their engine families within specified subclasses. More specifically, the averaging program promulgated at that time included NO_x averaging for heavy-duty gasoline engines (HDGEs) and NO_x and PM averaging within three specified subclasses for heavy-duty diesel engines (HDDEs). HDDEs used in urban buses may average NO_x emissions with other HDDEs used in the same subclass, but are precluded from any form of PM averaging. EPA recently promulgated a very similar averaging program for heavy-duty methanol-fueled engines (HDMEs) applicable beginning 1991. In the methanol averaging program, Otto-cycle HDMEs[1] are treated in the same manner as HDGEs and diesel-cycle HDMEs are treated in the same manner as petroleum-fueled HDDEs.

The averaging concept allows some engine families to emit at levels above that of the standard, as long as other engine families produced by the manufacturer within a specified averaging set can offset these higher emission levels by emitting at levels below that of the standard. The averaged FELs (weighted by horsepower and actual U.S. production volumes) must be at or below the applicable emission standard. Averaging, therefore, allows manufacturers to optimize their emission control systems between different engine families, which reduces control costs. However, averaging only benefits manufacturers with several (at least two) engine families within the allowed averaging set.

Trading is an extension of the averaging concept that provides the opportunity for all manufacturers to optimize their emission control systems and reduce costs by allowing them to average their emissions with one another. Under this program, an engine family with a relatively low emission control cost could be designed to be certified below the level of the emission standard, thus generating emission "credits." These credits could then be traded (*e.g.*, sold) to another manufacturer who has one or more engine families with relatively high costs of emission control. The second manufacturer could then design its families to be certified above the level of the standard and use the purchased emission credits to compensate for the difference between the level of the emission standard and the certified level. As with averaging, trading would be allowed only within specified trading sets, which are described later in this

[1] See Section II-A for a more detailed explanation of the HDE combustion cycles, types, and subclasses.

section. Permitting emission control systems to be optimized through trading would reduce manufacturing, operating, and maintenance costs, while still maintaining the same total degree of emissions control.

Banking can also be viewed as an extension of the averaging concept. Banking allows a manufacturer to produce emission credits and save them for a period of time (banking) for future use within an established averaging or trading program or for single application to a given engine family. Banking inherently expands the emission control technology optimization and cost saving benefits of averaging and trading since it increases the manufacturer's flexibility by adding a time dimension over which credits can be used.

One key advantage of banking is that it could help manufacturers by allowing a smoother transition of control technology between model years when new emission standards become effective. To accomplish this transition, a partial reduction in certified emission levels would have to be made before the new emission standard becomes effective, in order to create credits. When the new emission standard becomes effective, these credits could then be used in an averaging or trading program to provide the manufacturers greater flexibility in reducing emissions from their engine families. The use of banked credits would also extend the time before a manufacturer's engine families would have to attain the level of the new emission standards, which, in turn, provides manufacturers increased flexibility in terms of product planning and development. Greater product planning flexibility and some insurance against unforeseen emission-related problems during production may also be afforded if banking is available during periods when emission standards are stable.

Banking and trading programs are worthwhile because they increase the manufacturers' flexibility and provide the opportunity for a savings in the costs of reducing emissions. The value of emission credits is enhanced beyond that with averaging alone, because, under trading, credits become marketable and, under banking, credits take on a time value. In fact, it may be that banking and trading programs could provide an economic incentive to spur the development and use of lower emitting engines or improved emission control technology to generate credits. The achievements demonstrated through these engines and control technologies could then serve as the technological basis for more stringent emission standards in the future. Thus, banking and trading programs would be anticipated to have environmental as well as economic benefits.

The banking and trading programs proposed today have been carefully structured to have no adverse environmental impact. No adverse impact would be expected from trading, since emissions among the manufacturers' engines would average out to the level of the applicable standards. Similarly, no adverse impact would be expected from banking, since emission levels averaged over the model years involved would be the same as those expected if all engine families emitted at the level of applicable emission standards each model year. Moreover, under banking, emission reductions would be achieved earlier than would otherwise occur, which would provide greater benefits to society. In "present value" terms, benefits realized in the near term are worth more to society than benefits realized later in time.

However, it should be clear that addressing any potential adverse environmental impact requires programs that are structured to minimize or eliminate possible situations which could lead to in-use emission increases. This requires that in the absence of better data, etc. transactions be limited to engines with similar design, operating, and use characteristics. Such considerations existed when EPA first promulgated HDE NOx and PM averaging; and, as is described below, EPA is proposing banking and trading programs with similar (although not identical) fuel and subclass restrictions as exist for the current averaging program. Absent other possible measures or provisions which are discussed in Section IV below, EPA believes such restrictions are necessary.

B. Summary of the Proposed Programs

The trading, banking, and expanded averaging programs which are the subject of this proposal are summarized briefly below. More detail and supporting rationale are contained in Section IV of this notice.

The banking program is proposed for the 1990 model year while the trading and expanded averaging programs are proposed for the 1991 model year. All would include diesel-, gasoline-, and methanol-fueled HDEs. As in the current NOx and PM averaging program for these engines, trading and averaging of emission credits would only be allowed among engine families within specified sets. In general, these sets would be similar to those used in the existing HDE averaging program. For petroleum- and methanol-fueled diesel HDEs, trading would be permitted only between engine families within the same subclass (*i.e.*, light, medium, or heavy). As with the current averaging program, cross-subclass trading would not be allowed for diesel engines, except possibly as discussed in Section IV. Also like the present averaging program, trading would be allowed among all gasoline- and methanol-fueled Otto-cycle HDEs.

To increase the manufacturers' flexibility and the potential cost savings, today's notice proposes three new provisions beyond those in the current HDE averaging program. These provisions do reflect a shift from past policies, but should not cause adverse environmental or equity impacts. The provisions, which are described below, would be applicable to both averaging and trading for 1991 model year HDEs and, thus, would revise the current averaging program.

First, due to the similar emission traits (high NO_x and PM emissions relative to those of HC and CO) and expected use characteristics of diesel-cycle engines, averaging and trading between petroleum- and methanol-fueled diesel HDEs would be permitted. Likewise, averaging and trading between gasoline- and methanol-fueled Otto-cycle HDEs would also be permitted because of their similar emission traits (high HC and CO relative to NOx and PM) and expected use characteristics. However, exchanging PM and NO_x credits between engine families in the different petroleum- and methanol-fueled diesel HDE subclasses would still not be permitted. Also, averaging and trading between "diesel-cycle" and Otto-cycle HDMEs would not be permitted except as noted below.

Second, a new heavy heavy-duty engine (HHDE) category would be established and would be analogous to the current heavy-HDDE subclass but would also include HDDEs, HDGEs, and HDMEs. Cross-fuel averaging and trading between all engine families in this HHDE category would be allowed for NOx, regardless of the fuel used.

Third, the averaging, trading, and banking programs would be extended to cover the urban bus particulate standard. In so doing, PM averaging and trading would be allowed among all urban bus engine families (*i.e.*, HDDE and HDMDE urban buses). Exchanging PM credits between urban bus engines and other HDEs would still not be allowed. However, NOx averaging and trading with other HDEs would be permitted.

As previously stated, the three new provisions proposed above represent a

shift in EPA's past policy regarding cross-fuel credit exchanges. These provisions are being proposed for two reasons. First, they would provide a small increase in flexibility and therefore could provide a cost savings for manufacturers. However, they are still relatively limited in nature and would not be expected to lead to significant adverse equity or environmental impacts. Second, these provisions would help promote the use of alternative fuels (at present, methanol) which could provide an environmental benefit.

The benefits of expanded averaging, trading, and banking would be increased over those expected from a more limited approach which does not include such flexibilities. Nevertheless, it is important to note that averaging and trading between HDGEs, HDDEs, and HDMEs would be permitted only for NO_x credit exchanges between engines within the new HHDE category. No other cross-cycle averaging or trading is proposed, including credit exchanges between Otto-cycle and diesel-cycle HDMEs. Although cross-cycle exchanges of PM credits would not be allowed under the proposal, EPA would consider establishing such a program if manufacturers provide specific proposals (e.g., test procedures, emission standards, etc.) to implement such a program. Furthermore, as with the past averaging programs, banking and trading would not apply to engines certified under the California vehicle/engine emission control program. These California engines would not be allowed to either generate or use credits. Cross-pollutant credit exchanges are also still prohibited.

Finally, in terms of banking EPA is proposing two different approaches for comment and is also seeking comment on several parameters which need to be considered in the design of a banking program. First, EPA is proposing a NO_x and PM banking program that would be effective only during the transition period to stricter standards for either pollutant. Under this program, the generation and deposit of NO_x and PM credits could occur one to three model years prior to the model year in which the new standard takes effect. The withdrawal and use of credits would be allowed beginning the same year when generated and ending two model years after the new standard takes effect. With this relatively limited banking program, no credit depreciation provisions are being proposed. Under this approach, banking would first be made available for the 1991 NO_x and PM standards and would continue for the 1994 standards. This proposal would allow deposit of credits in model years 1990 through 1993 and withdrawal of credits in model years 1991 through 1995. As an alternative approach, EPA is proposing a rolling banking program where credits for banking could be generated in any model year and would have a life of up to five years. (This will henceforth be referred to as the rolling banking program.) With regards to this second proposal, EPA is specifically seeking comment on the need for and desirability of a rolling banking program, the appropriate credit life, and whether or not and if so, how credits should be depreciated.

Banked credits could be used in an averaging program, traded, or applied singly to a given engine family. However, the use of banked credits would be subject to the restrictions which are applicable to the engine type (cycle, fuel, subclass) which originally generated the credit.

C. Summary of Economic Benefits

The savings in emission control costs that would accrue from a program due to trading were estimated under an EPA contract.[2] The potential savings estimates fall into two basic categories: (1) Avoided costs of fuel consumption increases resulting from NO_x-reduction techniques and PM-reducing trap oxidizers and (2) deferred initial purchase and maintenance costs for trap oxidizers. Using the 1991 emission standards and a program structure similar to the existing HDE averaging programs, the economic analysis showed that trading could save approximately $7.8 million per year in total emission control costs over those expected with averaging alone. An important benefit reflected in this value is the "evening out" of cost savings among manufacturers. Through trading, all manufacturers would have the opportunity to obtain credits and thereby reduce their costs.

The cost savings study was prepared before a banking program was considered and the methanol-fueled HDE regulations were promulgated. The study also does not include the potential cost savings which accompany the three new cross-fuel provisions discussed above. Furthermore, potential cost savings are probably understated because data was not available to account for cost differences among manufacturers and compliance cost differences among engine families themselves. As data permits, these will be taken into account in a forthcoming updated version. Conversely, due to recent technology changes in the HDDE field, many manufacturers now feel that particulate traps will not be required on most families in order to meet the 1991 PM emission standard. This could reduce the potential cost savings. Although the economic model requires updating, the existing results do provide a general idea of the benefits that can be obtained with banking and trading. The results of the analysis are shown in Table 1.

TABLE 1.—EMISSIONS CONTROL COSTS FOR 1991 STANDARDS

[Million dollars per year]

Category	Control cost	Savings
Baseline—No averaging or trading	$1,009.6	
Averaging vs. Baseline:		
Fuel & Subclass Restrictions	$886.5	$123.1
Fuel Restrictions	851.4	158.2
Unrestricted	818.1	191.5
Averaging & Trading vs. Averaging:		
Fuel & Subclass Restrictions	$878.7	$7.8
Fuel Restrictions	842.4	9.0
Unrestricted	710.9	107.2

II. Development of Proposal

As was mentioned previously, EPA published a March 1985 rule which promulgated a series of emission standards aimed at reducing the level of NO_x and PM emissions from HDEs. Beginning in the 1990 model year, the HDE NO_x emission standard will drop to 6.0 grams per brake-horsepower-hour (g/BHP-hr), with another reduction to 5.0 g/BHP-hr required for 1991 HDEs. For HDDEs, PM emissions were regulated for the first time starting with the 1988 model year, with an emission standard of 0.60 g/BHP hr. For 1991, the PM standard drops to 0.10 g/BHP-hr for urban buses, and by 1994 the PM standard will be reduced to 0.10 g/BHP-hr for all HDDEs.

EPA set these standards according to the technology-forcing mandate of the Clean Air Act. At the same time, EPA sought to provide the regulated industry and society as a whole with the most cost effective means of achieving and demonstrating compliance with the emission standards. EPA has determined that emissions averaging programs are desirable for the NO_x and PM emission standards for HDGEs,

[2] "Savings From the Application of Trading and Averaging to Heavy-duty Engine Regulation," Sobotka and Company, Inc., August 1986. (All documents footnoted in this preamble are available in the public dockets referenced in the Addresses section.)

HDDEs, and HDMEs (except for urban buses in the case of PM) beginning in the 1991 model year. EPA designed the averaging programs in such a way as to reduce the cost of compliance with the relatively stringent emission standards, while still gaining the full emission reduction anticipated by implementing more stringent standards. Thus, the overall cost effectiveness of the standards was improved.

With today's notice, EPA is proposing to expand the existing HDE averaging program to cover urban bus PM standards and to include banking and trading programs for all HDEs to further enhance the cost-effectiveness of these HDE NO_x and PM emission standards. Three brief discussions are presented below to provide background information which may be helpful to understand the details of this proposal. First, to help explain the structure of the averaging, trading, and banking programs, a brief review of EPA's HDE categories will be presented. Second, since it is the basic building block for the proposed banking and trading programs, the existing averaging program will be described. Finally, a short review of the history of banking and trading will then describe how the proposed programs grew out of the existing averaging program.

A. Engine Category Description

HDEs fall into several categories. The two major distinctions between HDEs are the type of combustion cycle used to generate power and the type of fuel burned. Presently, the two types of combustion cycles used in HDEs are the Otto cycle and diesel cycle (sometimes called the compression-ignition cycle). Historically, Otto-cycle HDEs have burned gasoline fuel, while diesel-cycle HDEs have burned petroleum-based diesel fuel. However, methanol-fueled Otto-cycle HDEs and methanol fueled diesel-cycle HDEs are now being developed. Since the trading, banking and expanded averaging programs affect all HDEs, some classification terminology would be helpful to facilitate the following discussions. The following acronyms will be used to represent each of the four major engine types as described in Subpart A of the Code of Federal Regulations:

HDGE: heavy-duty gasoline-fueled Otto-cycle engine

HDDE: heavy-duty petroleum-fueled diesel engine

HDMDE: heavy-duty methanol-fueled diesel engine

HDMOE: heavy duty methanol-fueled Otto-cycle engine

For sake of completeness it should also be noted that the acronym HDE refers to all heavy duty engines while HDME refers to all heavy-duty methanol fueled engines.

In addition to categorizing HDEs by the combustion cycle and fuel type, HDEs are also categorized by other criteria. HDDEs and HDMDEs can be categorized into light, medium, and heavy subclasses. The determination of subclass is based on factors such as the Gross Vehicle Weight Rating (GVWR) of the vehicle in which the engine is installed, vehicle usage and operating patterns, vehicle design characteristics, engine horsepower, and other engine design and operating characteristics.

Light heavy-duty diesel engines (LHDDEs) usually have non-sleeved cylinders, are not designed for rebuild, generally have horsepower ratings between 70 and 170, and normally are found in vehicles having a GVWR between 8,501 and 19,500 pounds. Medium heavy-duty diesel engines (MHDDEs) include both sleeved and non-sleeved engines, may be designed for rebuild, and have horsepower ratings typically from 170 to 250. They are normally found in vehicles with a GVWR between 19,501 and 33,000 pounds. Heavy heavy-duty diesel engines (HHDDEs) are sleeved and are designed for multiple rebuilds. Their rated horsepower generally exceeds 250, and they are normally used in vehicles whose GVWR exceeds 33,000 pounds. EPA expects future HDMDEs to have similar designs and operating characteristics and would therefore fall into similar categories.

While there are also some differences among HDGEs, the broad differences in horsepower, basic engine design, useful life, usage patterns and rebuild patterns do not exist for these engines. Because of these similarities, there are no subclasses for HDGEs. Since HDMOEs would be expected to compete with and, in some cases, replace HDGEs, future HDMOEs would be expected to have the same operating and use characteristics as HDGEs. Thus, there are no subclasses for HDMOEs.

The HDE group also includes a special sub-group, urban bus engines. As described in the Code of Federal Regulations, an urban bus is a heavy-duty diesel-powered vehicle with a load capacity of fifteen or more passengers intended primarily for intra-city operation Its use is characterized by short rides and frequent stops. The recent final rule implementing emission standards and other provisions for methanol-fueled vehicles/engines expanded this definition to include HDMDEs.

B. Existing Averaging Program

The proposed HDE banking and trading programs are designed as an extension of the current HDE averaging concepts and utilize the same basic rationale and structure as the existing HDE NO_x and PM averaging program. To help explain how today's proposal was developed, a review of the structure, rationale, and procedures used in the existing HDE averaging program is included below.

First, in terms of structure, the current averaging program was designed to apply to all three types of HDEs: HDGEs, HDDEs, and HDMEs. To maximize the manufacturers' flexibility and the potential cost savings, a largely unrestricted program structure was desirable. However, as discussed in the preamble for the averaging rule (50 FR 10606, March 15, 1985), many commenters expressed concerns that a largely unrestricted program could have adverse environmental and equity effects. Some commenters stated that localized increases in pollutant concentrations could result from a nonhomogeneous distribution of vehicles in an averaging program. Other commenters were concerned that cross-fuel averaging could result in fleetwide emission increases and adverse equity effects. Some commenters also argued that the large differences in manufacturer size would result in large differences in the extent to which manufacturers could make use of an averaging program. Manufacturers with very diverse product lines could utilize averaging to a greater extent than manufacturers with limited product lines and thereby could obtain a larger reduction in costs.

EPA generally agreed with these comments, and therefore, established several prohibitions to address these potential adverse equity and environmental impacts of an averaging program. Under the present HDE averaging program, cross-fuel averaging is not permitted. Also, for similar reasons, cross-subclass averaging is not permitted for HDDEs and HDMDEs. No such restrictions exist for HDGEs and HDMOEs since subclass categories do not apply to these engines. Finally, because of their unique operating mode, HDEs used in urban buses are not permitted to average PM emissions at all. However, these special provisions do not apply to urban bus NO_x emissions. For NO_x emissions, urban buses are treated as other HDEs.

Second, in terms of procedures, it should be noted that participation in the averaging program is voluntary.

Manufacturers may choose to preclude any or all engine families from averaging. Manufacturers electing to participate in the HDE averaging program must determine, prior to certification, emission limits for each family to be included in the averaging program. Each family emission limit (FEL) has the same relationship to a particular engine family as emission standards currently have to all engine families. The FELs are to be set by the manufacturer at levels both above and below the emission standard. However, there is a ceiling level, determined by EPA, above which no engine family will be certified.

Compliance is evaluated two different ways. First, each engine within a family must meet the FEL for that family just as if it were an emission standard. Second, the FELs for the families in the averaging set will be averaged to determine compliance with the applicable emission standard for HDEs by calculating a production- and horsepower-weighted average emission level. This method weights the emission contribution from each engine family, not only by production volume but also by the useful work that the engines perform (the rated power). Actual emission levels from emission testing (*i.e.*, from certification, SEA, or in-use testing) are not used in the averaging calculations; only the FEL values are used.

For manufacturers electing to use averaging, EPA will grant a certificate of conformity to each family that demonstrates compliance in the certification process with its PM or NO_x family emission limit. It is a condition of each such certificate that the manufacturer's weighted FELs, when averaged, meet the applicable emission standard(s) (PM, NO_x or both) at the end of the model year. The certificate(s) of conformity will be rendered void *ab initio* at the conclusion of the model year for those engines whose production caused a weighted average FEL level to exceed the applicable standard.

C. Proposal History

The banking and trading proposal is the product of four years of development and reflects input from a number of parties. These include members of the regulated industry, trade associations, environmental groups, other government agencies, and State governments. The following discussion describes the evolution of today's proposal.

In the October 15, 1984 Notice of Proposed Rulemaking (NPRM) covering HDE NO_x and HDDE PM emission standards, EPA proposed that manufacturers be permitted to use a form of emissions averaging as part of their compliance approach. In addition, EPA requested comments on the possibility of establishing an emissions trading program for HDE NO_x and HDDE PM credits to complement the proposed emissions averaging program. In the course of developing the final rule, EPA was able to satisfactorily address the concerns raised in the comments received on averaging, and the NO_x and PM averaging program discussed above was adopted. However, action on the emissions trading program was deferred, largely because the court-imposed schedule for promulgation of the NO_x and PM emission standards did not allow adequate time to work through the comments received on the trading concept.

Shortly following the decision to postpone action on emissions trading, EPA formed a technical committee to more thoroughly study the issues raised with regard to emissions trading and to develop details of appropriate options for dealing with these issues. Also, the study was expanded to include the possibility of adding a banking program to the trading program. The committee's study was completed, summarized in a staff report, and made available to the public in September 1986.[3] The economic analysis discussed in the Extended Summary was also released for public review at that time.

On January 22, 1987, a public workshop was held to further discuss the issues presented in the staff report and economic analysis and to allow industry and other interested parties the opportunity to respond to conceptual program structures. Representatives from 15 different manufacturers were in attendance, along with several government agencies. Formal presentations were made by five manufacturers and EPA. Written copies of these presentations are available in the Public Docket.

The development activities for the averaging, trading, and banking programs described above included only HDGEs and HDDEs. As a separate action, the Alternative Fuels Working Group of the Vice Presidential Task Force on Regulatory Relief was established to develop means to promote the use of engines with low polluting characteristics—such as engines using alternative fuels. Among the actions considered by the working group was the use of HDE emissions averaging, trading, and banking as an incentive to develop engines of this nature. EPA as a member of this Task Force ultimately concurred with this idea and agreed to propose these concepts. The methanol engine provisions proposed in this notice reflect a fulfillment of that commitment, with due consideration to other important factors in the design of the actual program.

[3] "Issue Analysis: Trading and Banking of Heavy-duty Engine e and Particulate Emissions Credits," EPA Staff Report, May 1986.

III. Summary and Analysis of Key Issues

The content and structure of the rules proposed here today were shaped considerably by public participation. Opportunities for public participation included two formal requests for comment and a public workshop. The first request for comment on the trading concept was made on October 15, 1984, in the NPRM for new NNO_x and PM emission standards (49 FR 40258). More recently, a request for comments was made when an EPA Staff Paper and Economic Analysis on banking and trading was released on September 8, 1986 (51 FR 31959). A public workshop to discuss the issues presented in the staff paper was later held on January 22, 1987.

This section provides a summary of the comments received on the key issues raised in the Staff Report and at the workshop, along with EPA's analysis of those comments. They have been grouped into the following areas for discussion purposes: Environmental Concerns, Equity/Competitive Concerns, Inclusion of Alternative Fuels, Credit Use/Life Options, and Legal Issues. At the time of the workshop, methanol-fueled engines were not being considered as part of any near-term banking and trading program. Therefore, with the exception of the section on alternative-fueled engines, the following discussions primarily consider only HDGEs and HDDEs.

A. Environmental Concerns

Through the Clean Air Act (CAA), Congress has charged EPA with the responsibility to protect and enhance the quality of the nation's air resources. While expanded averaging, trading, and banking should result in overall emission levels equal to or less than that achieved if every engine met the emission standard, there are some factors that, unless appropriate provisions are made, potentially could cause the overall emissions to exceed these levels. Comments in these areas have been broken down into potential national air quality impacts and potential local air quality impacts.

1. Potential National Air Quality Impacts

Comments on national air quality concerned both potential adverse impacts and potential improvements that could result from banking and trading programs. The concerns centered on loss of emission design cushions, marketing strategies, "false" credits, rebuild practices, cross-fuel trading, effects from combining banking and trading programs with an NCP program, and banking effects. Each of these is discussed below.

When certifying an HDE to an emission standard or FEL, manufacturers incorporate margins to account for both in-use deterioration in emission rates and variability in emission levels between engines and emission tests. The first concern is addressed by the use of a manufacturer-determined deterioration factor in certification, which requires that manufacturers include the effects of this deterioration when demonstrating compliance with the standard or FEL. It is not mandated that the variability effects be addressed during certification, but most manufacturers incorporate design cushions, (the safety margin between the certified emission level and the actual emission levels of the engines), to account for these effects. These design cushions also provide in-use compliance cushions for some engines.

Some commenters and EPA expressed concern that the enhanced value of credits under banking and trading might provide an incentive to shave the deterioration factor and design cushion margins in order to create more credits. This in turn would result in an increase in emissions and perhaps failures of emission standards or FELs in-use.

In response, several manufacturers stated that any incentive to shave deterioration factors or design cushion margins under banking and trading would be more than offset by the increased risk of failing Selective Enforcement Audits (SEA) or in-use recall evaluation testing. Further, it was suggested that these incentives exist under both the present certification program (every engine meets the standard) and under the averaging program available in 1991. Programs such as banking and trading might actually reduce problems of this nature since manufacturers would have more flexibility for demonstrating compliance.

While EPA is concerned about potential emission increases resulting from reductions in deterioration factors and design cushions, EPA agrees that similar incentives exist under the present certification practice and under the averaging program available in 1991. Also, there is some validity to the claim that the availability of credits under banking and trading could reduce the incentive to shave these margins in difficult compliance situations. This would especially be true if nonconformance penalties (NCPs) were not available. Thus, absent further information, EPA believes that any added incentive to shave design margins would probably be small and could be minimized by maintaining a viable HDE enforcement program. In addition, given the historical information from past certification on compliance margins (*i.e.*, standard, zero mile level, certified level), it would be possible to identify situations where compliance margins are being reduced inappropriately. In these cases further investigations would be warranted.

Second, some commenters were concerned that potential false (erroneous) credits could cause an increase in emissions. A credit would be "false" if the actual in-use emission level of the engine exceeds its certified level. In addition, if credits are based on projected engine sales, then any error in these sales projections would also result in the generation of erroneous credits. In both cases, before discovery of the error, the false credit could be traded to another manufacturer for use in certification. The use of false credits would then result in an in-use emissions increase.

EPA believes credit problems of this nature can be avoided. The largest potential for erroneous credits lies in inaccurate sales projections. It may be possible to minimize the impact of these potential errors by requiring quarterly reports of quarterly and cumulative actual U.S. production volumes and credit exchanges. If a manufacturer is not obtaining the needed credits during the year, the manufacturer could reduce the number of high-emitting engines being produced or take other measures, in accordance with the number of credits available. Manufacturers of engine families with FELs above the emission standard would be liable to penalties if they were unable to obtain sufficient credits.

EPA agrees that false credits could be generated by in-use HDEs failing their FELs or the emission standards. However, from an air quality perspective this problem is essentially no different than under the present certification program or averaging. The number of engine families certified would not increase, and there is no evidence to indicate that the number of failures or the degree of failure would increase. Selective Enforcement Audits and in-use testing would still be conducted. Thus, no adverse air quality impact would be expected.

The third air quality concern centered on the diversity in HDE rebuild practices. As discussed previously, HHDDEs are designed for multiple rebuilds; some MHDDEs are rebuilt; and LHDDEs and HDGEs are not normally rebuilt. Rebuilds essentially increase the average lifetime of engines. However, present regulations only require certification for the useful life (essentially the interval to retirement or first rebuild), which means that engines using credits need only accrue enough credits to meet this requirement. An increase in emissions could occur if the engine type [4] generating the credits is rebuilt less frequently (percent of engines rebuilt) or has fewer multiple rebuilds per engine than the engine type using the credits. A similar concern would exist if the rebuilt engine emission characteristics (between the two engine types) are substantially different from the certified level. In addition, a concern was expressed that even within a given engine type, rebuilding of higher emitting engines might be more attractive and less costly than lower emitting engines. This could lead to a disproportionate number of rebuilds for the higher emitting engines and an increase in emissions.

EPA believes that rebuilt engines would have the greatest potential for adverse environmental effects if cross-fuel and cross-subclass trading were allowed. Cross-fuel trading is a concern because, in general, HDGE and HDDE rebuild practices are considerably different. Similarly, cross-subclass trading for HDDEs is a concern because of the diversity in rebuild practices among the three HDDE subclasses.

These basic concerns can be addressed in one of two ways: prorating or program structure restrictions. An effective prorating scheme would require that credits be adjusted according to the average lifetime emissions of the engines involved. For example, assuming no rebuilt engine emission rate effects, if rebuilding practice differences cause one engine type to have an average lifetime three times as long as another, then three times the amount of credits otherwise required for certification would be needed to achieve equivalence when trading credits from the second engine type to the first. As was the case when the averaging program was developed, a

[4] "Engine type" refers to engines within a given cycle, fuel, and subclass (if applicable) category.

precise implementation of this approach requires more detailed information on HDGE and HDDE rebuild frequencies, intervals, and emission effects than is now available. Until rebuild practices and average lifetime effects are better understood and characterized, a prorating scheme which would allow cross-fuel or cross-subclass trading without raising air quality impact concerns cannot be effectively established. (One possible alternative approach to this problem is discussed later in Section IV of this Preamble.)

However, one way that air quality concerns due to differences in HDE rebuild practices could be minimized would be to allow trading only between families of the same engine type. This restriction was incorporated into the present averaging program in part to address this air quality impact concern. Under this approach, an LHDDE family could trade only with another LHDDE family; an HDGE family could trade only with another HDGE family; etc. While some small rebuild practice differences exist even among engines within the same fuel/subclass group,[5] EPA does not expect they would measurably effect the air quality.

Finally, within a subclass, rebuild differences between high- and low-emitting engines are not expected to be an appreciable problem. While a high-emitting engine could be cheaper to rebuild than a low-emitting engine, the cost of rebuilding a low-emitting engine is still expected to be much less than the cost of purchasing a new engine. Thus, EPA expects low-emitting engines to be rebuilt about as frequently as high-emitting engines. Since EPA does not expect to see a large difference in rebuild practices within a given subclass, it does not believe there will be an air quality effect from allowing trading within subclasses. A similar concern existed when averaging was first considered for HDEs, and a similar conclusion was reached.

A fourth air quality concern raised by the commenters related to the different emission characteristics of gasoline and diesel engines. HDGEs have lower PM and higher total hydrocarbon (HC) and carbon monoxide (CO) emissions than HDDEs. In addition, in many cases NO_x reductions from HDGEs are generally less costly and more easily achieved than for HDDEs. It should also be noted that the HDE NO_x emission standard was set based on the reduction capabilities of the higher-emitting, harder-to-control diesel engines, instead of on the lower-emitting, easier-to-control gasoline engines. In light of these differences, commenters suggested that air quality could be adversely affected by cross-fuel trading of NO_x credits, since the less costly nature of the HDGE NO_x reduction could encourage the production of HDGEs at the expense of HDDEs. If this were to occur, HC and CO emissions could increase.

While it is conceivable that cross-fuel trading of NO_x credits would tend to directionally increase the desirability of producing HDGEs to generate NO_x credits, it is also true that the availability of these credits could make HDDEs less costly to buy and operate, and, thus, more attractive to purchasers. Hence, whether any real sales shift would occur is questionable. Also, many other more important factors, such as durability and fuel economy, dictate engine selection for heavy-duty vehicles and transcend initial purchase price. Furthermore, it should be noted that the air quality impact question cuts two ways. While it is true that under present standards total HC and CO emissions could increase if more HDGEs are sold, it should also be noted that PM emissions would decrease. Nevertheless, especially for HHDEs, EPA does not believe that a cross-fuel NO_x trading program would result in any measurable market shift between HDGEs and HDDEs. However, as will be discussed later, there are several other important reasons why cross-fuel trading must be considered carefully.

The other comments concerning potential nationwide air quality impacts focused on the possible availability of both non-conformance penalties (NCPs) and banking and trading programs. Section 206(g) of the Clean Air Act requires EPA to issue a certificate of conformity for HDEs that exceed a section 202(a) emissions standard but do not exceed a "practicable" upper limit determined by EPA, if the manufacturer pays an NCP established by rulemaking.[6]

Section 206(g)(3) also requires NCPs to be designed so as to:

—Increase with the degree of emission nonconformity;
—Increase periodically to provide incentive for nonconforming manufacturers to achieve the emission standards; and
—Remove any competitive disadvantage to conforming manufacturers.

In general, two air quality concerns were raised with regard to the interaction between the NCP program and the banking and trading programs. First, some commenters believed that banking and trading would expand the number of options and time frame available for non-conforming engines to reach the emission standards and that, as a result, total HDE emissions could increase. A second concern was raised that a manufacturer may attempt to "game" the NCP and banking programs to create credits for trading or for future use when NCPs become prohibitively expensive. This in turn would permit non-conforming engines to be certified for longer time periods and could lead to an increase in emissions over that expected with the NCP program alone.

EPA agrees that banking and trading programs would allow engines emitting above the emission standard(s) to be certified for a longer time period than might occur under the NCP program alone. However, no adverse air quality impact would be expected since these engines would be certified using emission credits generated by other engines emitting below the standards. Only under the NCP program would increased emissions be allowed.

EPA also agrees with the concern that the NCP and banking programs could be "gamed" to generate credits for future sale or use when NCPs become quite expensive. A manufacturer may try to "game" the programs by requesting NCPs for engine families that could be meeting the emission standard by averaging. (This assumes that more money would be made from the future sale or use of the credits than could be saved by not paying NCPs.) The manufacturer would be paying an NCP for one family while generating credits through another engine family that could then be banked and then traded or used to avoid paying NCPs in future years when the price of an NCP increases. Credits generated in this manner would undercut the purpose and impact of NCPs (NCPs are designed to provide an incentive to meet emission standards) and would result in emission increases (via an unnecessary use of NCPs). Thus, provision must be made to avoid the gaming situation outlined above.

In order to maximize the potential economic and environmental benefits, banking and trading programs should be as widely available as possible to provide the maximum degree of flexibility. However, their implementation or impact cannot be at odds with previously-established and statutorily-required EPA programs. Thus, the possibility of these practices

[5] "Diesel Engines," *Fleet Maintenance & Specifying;* May 1981; pp. 39–44. This document is available in Docket No. A–81–11.

[6] Details on NCPs and their application to engine families can be found in the December 31, 1985 issue of the **Federal Register** [50 FR 53454]. Details on the interaction between NCPs and the existing HDE averaging program have not yet been proposed.

described above must be eliminated, perhaps by not allowing a manufacturer to generate credits for banking and trading from a given engine type if any of the engine families in this averaging set is using an NCP. A discussion of the interaction between NCPs and the HDE trading and banking programs is presented in Section IV.

In addition to the comments suggesting that banking and trading had the potential to adversely affect national air quality, several commenters suggested such programs could actually improve nationwide air quality. Banking of emission credits would accelerate air quality benefits by encouraging manufacturers to produce lower emitting engines before a change in standards. The potential to sell credits would also be an economic incentive to investigate methods to reduce emission levels below applicable standards. This incentive would therefore encourage the development of improved emission control technology which could, in turn, serve as the technological basis for more stringent emission standards in the future.

2. Potential Local Air Quality Impacts

Local impacts refer to air quality changes that may occur in more limited geographical areas, such as large cities, metropolitan areas, large urban regions, or any other place with a large concentration of vehicles. As is described in the previously mentioned EPA staff report, changes in local air quality as a result of unrestricted banking and trading could potentially occur due to the differences in urban usage between the various engine categories. These differences include both urban market share and urban VMT fraction. HDEs differ greatly in these two aspects according to their engine type and the intended vehicle application. Trading of credits could adversely effect local air quality if the engines generating the credits had less overall urban usage than the engines using the credits. Averaging posed the same potential problem. Depending on the amount of "rural to urban" credit trading, some commenters agreed with EPA that adverse local impacts could occur.

Also, as was discussed in the EPA staff report, local impacts could also have a time dimension if a banking program were added. This would primarily occur if emission credits were accumulated and hoarded over several years and subsequently used in one or two model years or within a specific type of vehicle within a model year. Of course, if use of banked credits were limited to the period following the transition to tighter standards, actual increases in emissions (above levels that existed prior to the more stringent standards) would not occur.

Many commenters mentioned ways to minimize the potential increases in local ambient levels caused by different urban/rural usage patterns. The suggestions included using multiplicative credit correction factors based on urban fractions (prorating), restricting banking and trading by fuel type and/or subclass, and/or excluding urban bus engines from the banking and trading program.

Conversely, one manufacturer did not feel that banking and trading could greatly affect local air quality. This manufacturer provided three reasons. First, it stated that the heavy-duty vehicle (HDV) fleet contributes only a small percentage of mobile source emissions and that no manufacturer has more than 25 percent of the total HDV market. Second, the fleet turnover rate is such that manufacturers would have to continue the given emission strategy for several model years in order to see an effect. Third, for many vehicles to emit above the standard, there must be an ample supply of credits, which the manufacturer considered unlikely due to the stringency of the future emission standards.

Several points can be made in response. First, EPA does not believe that HDV emissions are only a small portion of total mobile source emissions. While HDVs represent only about four percent of all vehicle registrations,[7] they account for ten percent of the total vehicle miles traveled (VMT) per year.[8] When these VMTs are multiplied by the 1985 NO_x emission factors,[9] HDVs account for more than 40 percent of the total NOx emissions from mobile sources (2.73 million tons per year). Similarly, diesel HDVs account for 49 percent of mobile source particulate emissions for particulates 10 microns or less in diameter.[10] Of course, the contribution of HDVs to the mobile source NOx and PM inventories will decrease in the future as more stringent emission standards for these pollutants come into effect, but the relative importance of their contribution remains.

Second, due to the large number of miles accumulated per year, the fleet turnover rate for new HDEs is faster than for automobiles. The annual market penetration for new HDDEs into the fleet is on average about 15 percent; and, for new HDGEs, it is 13 to 14 percent. In addition, the market shares of some manufacturers are considerable. Based on actual 1985 engine production figures reported to EPA by HDE manufacturers, one manufacturer had approximately 45 percent of the total HDE market. In the HDDE subclasses, one manufacturer had more than 60 percent of the LHDDE market and approximately 40 percent of the MHDDE market. Another manufacturer had 55 percent of the HHDDE market. Thus, the HDE market is structured such that small impacts on local urban NO_x and PM emission inventories are conceivable.

In general terms, EPA agrees with the commenter's view that potential localized impacts would be small if the amount of available credits that could be created were also small. However, the number of NO_x and PM credits which might be available for trading and banking in 1991 and beyond remains to be seen. If the amount of credits available were small, both the potential local air quality impact and the benefit to the manufacturers would be small. If more credits than anticipated by the commenter were to become available, then potential local air quality impacts with trading between engines of different urban usage characteristics would become more important.

EPA agrees with those commenters who suggested that some measures would be needed to address different urban/rural usage among the different HDE classes and subclasses. A similar concern existed when averaging was first considered, and fuel and subclass restrictions were deemed necessary to avoid any potential problems. The options available here, restricting trading by fuel and subclass (as is done in the present averaging program) or using a prorating scheme of some type to assure no increase in urban emissions, are similar to those discussed above when the effect of rebuilds was considered. While the parameter of concern here is urban/rural usage and not rebuild practices, the finding is essentially the same. More detailed and

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[7] *Fleet Characterization Data Used for MOBILE3*, EPA Report EPA-AA-TEB-EF-84-2, August 1984. This document is available in Docket A-87-03.

[8] *MOBILE3 Fuel Consumption Model*, EPA Report EPA-AA-TEB-EF-85-2, February 1985. This document is available in Docket No. A-85-21 (see "Addresses").

[9] *Compilation of Air Pollutant Emission Factors, Volume II: Mobile Sources*, EPA Report AP-2, September 1985, available for a reasonable charge from the National Technical Information Service (Phone Number: 703-487-4650; Order Number PB 87-205266).

[10] Based on *A Program to Calculate Size Specific Particulate Emissions for Mobile Sources—A User's Guide*, EPA Report EPA 460/3-85-007, August 1985, available for a reasonable charge from the National Technical Information Service (Order Number PB 86-179694/REB).

precise information on urban/rural usage of HDEs is needed to develop accurate prorating factors. Until such information becomes available, prorating cannot be effectively implemented to deal with this problem. Thus, program structure restrictions are proposed, although one possible alternative approach is discussed in Section IV of this Preamble.

Local air quality impacts due to a banking program could occur in the short term if credit hoarding is followed by liberal credit usage. This is unlikely to be a problem because of the family emission limits ceilings and the belief that banked credits will generally be most valuable to manufacturers in easing the transition to more stringent standards. Nonetheless, if EPA promulgates a rolling banking program, this potential problem can be addressed either by depreciating banked credits or through some other program which limits credit life if EPA analysis indicates this is necessary. The positive and negative aspects of each alternative are also discussed in Section IV where the rationale for the proposal is presented.

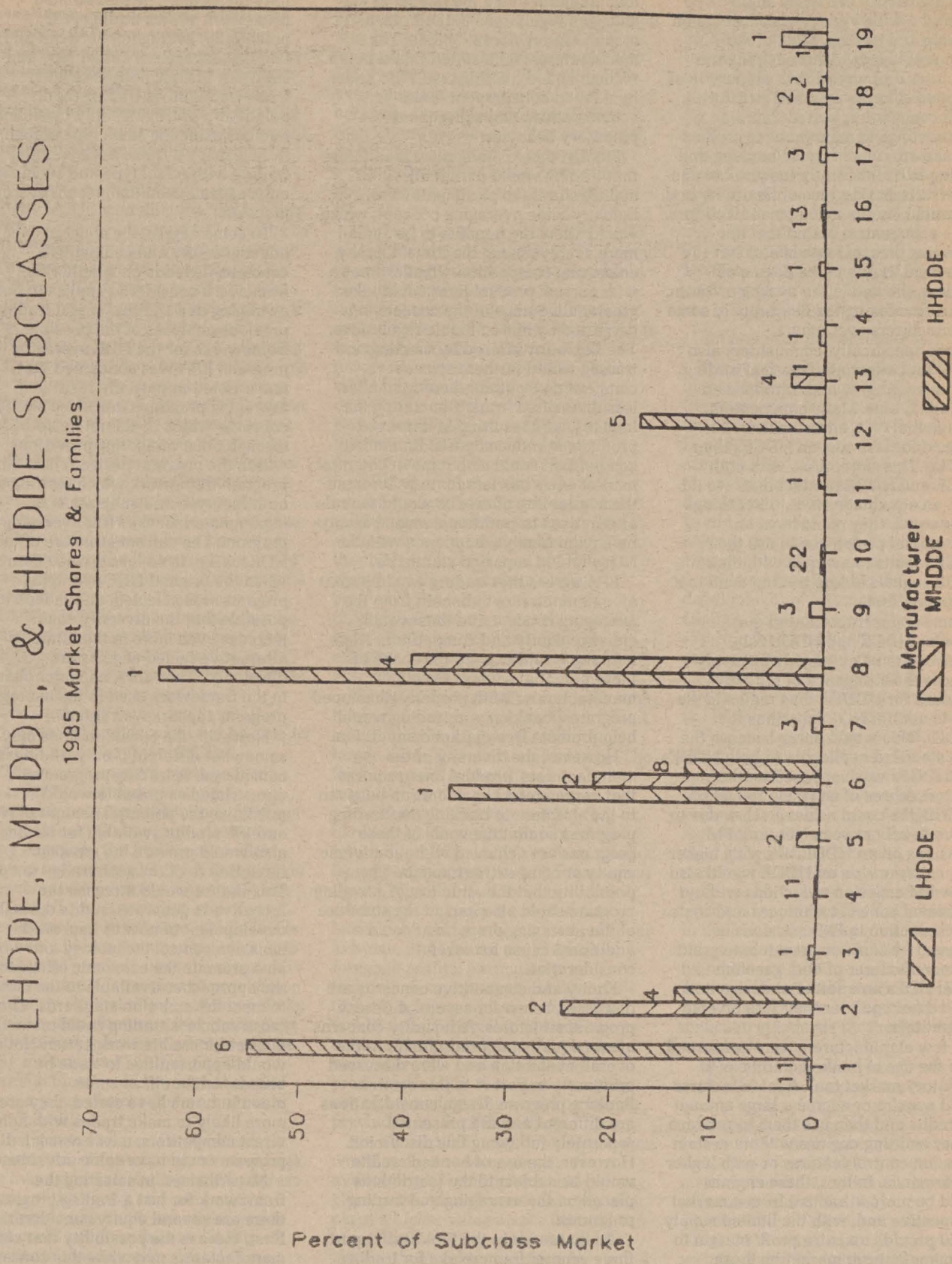
B. Equity/Competitive Concerns

Among others, one of the purposes of the proposed HDE banking and trading programs is to provide manufacturers more flexibility to optimize their emission control systems and thus to decrease the overall cost of meeting the NO_x and PM emission standards. However, when dealing with programs such as this which have economic implications, care must be taken that unfair and anti-competitive conditions not be created.

Several points of background in this area will be helpful. First, the present HDE market is divided between HDDEs and HDGEs; no HDMEs are presently being produced. Figure 1 shows the 1985 market shares by manufacturer for each of the three HDDE subclasses. As illustrated, on the bottom of Figure 1, the HDDE industry is composed of 19 firms with a wide variety of production levels. The number of families in each subclass for each manufacturer is shown above the bars. Of the nineteen firms active in the HDDE market in 1985, nine sold in only one subclass, eight sold in two subclasses, and only two sold in all three subclasses. In terms of market share, at least half of the firms have less than one percent of the subclass market share in which they participate. Other firms hold at least a third of their respective subclass market share. Considering the entire HDDE market, seventy percent (13) of the firms have less than one percent of the market each, while twenty percent (4) of the firms each have over ten percent of the market. Two HDDE firms also have HDGE product lines and hold a substantial portion of that market.

BILLING CODE 6560-50-M

Figure 1



BILLING CODE 6560-50-C

This diversity in market share fostered a wide variety of comments on banking and trading. Most of the comments assumed various program structures and were either supportive of or opposed to the assumed structure. Some commenters stated that the diverse range in manufacturer product line and size would cause banking and trading to be inherently inequitable due to the different degrees of flexibility and potential benefits among manufacturers. Some commenters stated that the averaging program would also have to be revised to reflect the degree of freedom allowed in the trading program, further increasing the flexibility of some manufacturers over others.

More specifically, commenters also stated that allowing cross-fuel trading (and averaging) would introduce an additional bias. Many commenters believe that NO_x emissions can be reduced for less cost on HDGEs than HDDEs. Therefore, firms with both HDGE and HDDE product lines would have an advantage since, other things being equal, they could have an institutional preference to use their HDGE credits to average with their HDDE engines before trading them to a competing firm.

Some commenters stated that allowing HDGE and HDDE NO_x emissions to be averaged effectively reduces the stringency of the NO_x standard for HDDEs, thus reducing the cost to control NO_x emissions for HDDEs. This would occur because the NO_x standard applicable to both HDDEs and HDGEs was set based on the greatest degree of emission reduction that HDDEs could achieve. Also, due to the trade-off between NO_x and PM emissions on an HDDE, allowing higher NO_x emissions on an HDDE would also allow PM emission reductions without additional control techniques and costs. This reduction in PM emissions is believed by some commenters to grant the manufacturer of both gasoline and diesel HDEs an additional design and cost advantage over their less diverse competitors.

A few manufacturers were concerned with the use of banked credits as a predatory market tool. A manufacturer could acquire or accrue a large amount of credits and then use them to produce higher emitting engines without certain emission control features or with higher performance. In turn, these engines could be more attractive from a market perspective and, with the limited supply, could provide an extra profit margin to the manufacturer marketing those engines. The commenters felt that use of credits in this manner would help a manufacturer avoid the impact of the emission regulations that all other manufacturers normally face. The manufacturers who stated this concern recommended limiting credit life under banking to help prevent large accumulations and subsequent predatory behavior.

Finally, other commenters mentioned that trading would permit all manufacturers to participate in an industry-wide averaging concept, which would allow the benefits to be spread more evenly among the firms, thereby enhancing competition. Smaller firms with narrow product lines could take greater advantage of the cost-savings permitted by more flexible regulations. The flexibility offered by banking and trading would further increase competition by strengthening smaller, less diversified firms, stimulating the industry, and resulting in improved products at reduced costs. Enhanced competition could also remove potential market entry barriers for new firms, as the availability of credits would provide alternatives to traditional engine-family-by-engine-family compliance with the NO_x and PM emission standards.

EPA agrees that trading would permit all manufacturers to benefit from the averaging concept and thus would enhance equity and competition. Also, banking would expand the scope of these potential savings for all manufacturers. With properly developed programs, banking and trading would help promote free market competition.

However, the diversity of the manufacturers' product lines requires that very careful consideration be given to the structure of banking and trading programs so that the goals of these programs are achieved without adverse equity or competitive impacts. The possibility that the structure of a trading program could also impact the structure of the averaging program adds an additional cause for careful consideration.

Equity and competitive concerns are discussed below for several different program structures. Air quality concerns are an equally important factor in the overall evaluation and were discussed previously in part A of this section. Banking program design considerations are different and are presented separately following this discussion. However, the use of banked credits would be subject to the restrictions placed on the averaging and trading programs.

As discussed in the EPA staff report, three general frameworks for trading (and potentially averaging) are possible: unrestricted, partially restricted, and fully restricted. The unrestricted framework allows trading (and, potentially, averaging) between all HDE families, regardless of fuel type and subclass. The partially restricted framework allows trading (and, potentially averaging) only by engine families using the same type of fuel. The fully restricted framework permits trading within fuel type and subclass only, as is done in the present averaging program.

To some degree, the concern over adverse equity and competitive concerns depends on whether the framework considered applies to both averaging and trading, or just trading. In previous analyses of the possible frameworks for the HDE averaging program, EPA was concerned that unrestricted or partially restricted averaging programs introduce equity concerns which could not be addressed through other mitigating provisions within the program design. Thus, the program framework which restricts by both fuel type and subclass was implemented for the HDE averaging program. The current structure of the HDE market is no less diverse than when the original HDE averaging program was selected, and indeed it is possible that the diversity could increase even more in the future as alternative-fueled engines are developed. Therefore, no major change in the framework used in the averaging program appears warranted.

However, the considerations may be somewhat different if only trading is considered. A trading program as unrestricted as possible would maximize the potential amount of NO_x and PM credits available for trading and also would provide the greatest flexibility to allow such trades to occur. This in turn would increase the incentive to generate credits through the development of new or improved emission control technology and would also promote the economic efficiency of the approaches available to the industry to meet the emission standards. Thus, cross-subclass trading could make the market for credits work better. Not only would opportunities to trade be broadened, but if, as some manufacturers have stated, they are more likely to make trades with non-direct competitors, a less restricted program could have some advantages.

Nevertheless, in selecting the framework for just a trading program, there are several equity considerations. First, there is the possibility that some manufacturers may view this concept as anti-competitive since manufacturers with more diverse product lines could

have the opportunity to enhance their overall economic positions relative to their less diverse competition. This would especially be a concern for cross-fuel trading. Second, there is a concern that it may be difficult to prevent "gaming" of an unrestricted or partially restricted trading program, which would circumvent the averaging program restrictions.

To illustrate the first concern, an HDGE/HDDE manufacturer could trade relatively easily obtained NO_x credits to HDDE manufacturers and then use the extra funds generated to subsidize its HDDE or HDGE prices to gain market share. A related problem would occur if credits are not freely traded and the seller of credits denies their availability to major competitors. On the other hand, not selling credits to other firms when the economic payoff for trading is higher than the use of credits internally is not in the credit creator's own economic self-interest. Profits would be foregone. Moreover, it is not clear that the strategy of subsidization described above would be advantageous, because the transaction would have benefited the purchaser, too (otherwise, the trade would not have occurred). A subsequent lowering of prices by the seller on his HDDE or HDGE subclass might thus be matched by the credit buyer since the latter is now in a better position to match the prices as well. Trades with an HDGE manufacturer could be particularly advantageous to smaller firms that otherwise might not be able to obtain credits for their HDDEs.

The second concern centers on the possibility of circumventing the averaging program restrictions. Without adequate restrictions, manufacturers may engage in the trading of credits among several families of different fuels or subclasses in such a way that it has the net effect of averaging emissions across fuels or subclasses. While this is not likely to be a common practice, it is difficult to preclude once the program is implemented. One means of providing a safeguard against this practice would be to allow manufacturers that participate in the diesel subclass market to engage only in "one way" trades; *i.e.*, the manufacturer could buy or sell credits from a given diesel subclass but could not do both.

In a general sense, if considered acceptable, different program structures for averaging and trading could address many of the equity and competitive concerns raised with averaging and in fact could enhance the availability of credits to those smaller, less diverse manufacturers who benefit less from averaging. With some safeguards to address gaming, a less restricted program than now in place for averaging may be possible for trading. Of course, air quality impact concerns would also have to be considered. As before with averaging, if these environmental concerns cannot be addressed, then restrictions are needed. Environmental, equity, and competitive concerns are evaluated together in the context of possible program structures in Section IV.

Banking arises as a potentially useful policy, for several reasons. First, it could ease the transition to tighter standards. Second, it could increase the manufacturer's product development and compliance flexibility. And, third, it is valuable to society to speed the process of reducing emissions. Thus, while banking would permit the decrease in emissions to occur more slowly (and more smoothly) after the tighter standard goes into effect, it would also provide society with the benefits of an earlier decrease in emissions from mandated levels than would otherwise have occurred. The short-term increase in emissions after the tighter standard goes into effect would not be an increase above previous levels, but would merely represent a reduction less than would have otherwise occurred with the effective date of the new and more stringent standard.

Equity and competitive concerns with banking focus primarily on the inherent advantage banking would afford to larger, more diverse manufacturers. The first argument is that these manufacturers would have more opportunity to generate credits for banking which would increase their future flexibility relative to their smaller, less diverse competitors. This increased flexibility could lead to an economic advantage, but only on an absolute basis, not a relative basis. Carried to an extreme, large banks could result in foregone profits; particularly, as technology improves, the ability of all firms to achieve emission reductions would reduce the value of banked credits. The second argument is that banked credits could be used as a predatory market tool. However, this use of banked credits would be largely precluded by the FEL ceilings.

Finally, virtually any banking program would reduce to some degree the availability of credits for trading at any given price. Manufacturers simply may place a higher value on the internal use of credits than they could obtain by trading them unless the price for credits rises. The more credits are hoarded, the more their price will increase. This encourages more credit generation. Nonetheless, as was also the case in the air quality impact discussion, measures to encourage credit use within a reasonable time following their generation could provide the incentives for appropriate and orderly use of credits, as viewed by EPA. The inherent advantage of larger, more diverse manufacturers could not be totally eliminated, but any potential adverse effects on competitors from banking could be addressed through this approach. The combined effects of environmental and competitive concerns on the structure of a banking program are discussed together in Section IV.

C. Inclusion of Alternative Fuels

For over a decade, there has been active interest in the use of alternative transportation fuels to reduce the dependence on petroleum-based fuels. In addition, alternative-fueled engines are typically "clean burning," providing an environmental impetus for their development. Since banking and trading would encourage the development of engines that could generate NO_x and PM emission credits, these programs could provide an incentive for the development of alternative-fueled engines. Their use could, therefore, result in further reductions of emissions and emission control costs. Several commenters also suggested that alternative-fueled engines be included in the banking and trading programs.

To date, work in the area of alternative transportation fuels has centered on methanol. Substantial work has been done on the development of various methanol engine designs for highway motor vehicles; and, hence, their NOx and PM emission characteristics are fairly well understood. Several cities are even evaluating methanol-fueled urban buses in demonstration programs. Because of this development work and in response to public and private interest in methanol as a future motor vehicle fuel, EPA recently promulgated federal emission standards for methanol-fueled vehicles/engines.

While primary emissions from methanol-fueled engines are fairly well understood, secondary emissions from methanol-fueled engines are not. Information on all methanol emissions, including potential health impacts from methanol and formaldehyde levels, is presented in detail in the aforementioned methanol rulemaking. There, EPA noted that direct exposure to methanol and formaldehyde emissions from methanol vehicles has the potential to pose a public health risk due to acute,

toxic or, in the case of formaldehyde, carcinogenic health effects.

The rulemaking for methanol fueled vehicles also indicated that methanol can potentially impact global warming depending on the feedstock used to produce the methanol and the amounts produced. Methanol can be produced from coal or from natural gas. However, these processes release different amounts of greenhouse gases, such as carbon dioxide. A complete switch to coal based methanol fuel systems could result in a doubling of the motor vehicle contribution to the greenhouse effect relative to the contribution of current petroleum-based fuels. However, methanol derived from natural gas would have little or no effect.

EPA believes that the quantity of methanol required for HDEs can be met from a natural gas feedstock. Therefore, use of methanol fuel in HDEs is not expected to have an adverse impact upon global warming. However, the use of methanol in HDEs would promote the development of an infrastructure which might encourage the use of methanol in other vehicle classes. The effect of greater use of methanol on global warming is uncertain. Since the available information is presently insufficient to resolve the above concerns, the Agency will continue to investigate these issues and will take appropriate action if warranted. EPA asks for comment on these concerns.

Among other potential alternative transportation fuels, compressed natural gas (CNG) is also receiving attention. However, CNG-fueled HDEs are still in the early development stage and more work is needed to better understand their emission characteristics. Presently, there are no federal emission standards for CNG-fueled HDEs.

Since methanol engines are the only alternative fueled HDEs with federal emission standards and other related procedures, only methanol-fueled engines are included in the proposed banking and trading programs. However, EPA will evaluate the possibility of including CNG-fueled or any other alternative-fueled HDEs in these programs in the future as federal emission standards and other related procedures are established.

D. Credit Use and Life Options

How emission credits could be used and how long a credit could be banked were two additional areas of comment. The obvious and well-supported use of credits was in the certification process where credits could either be averaged or traded to show compliance with applicable standards. Banking of credits received almost unanimous support from commenters. Banked credits could be used for future averaging purposes or for future transactions with other manufacturers. Banked credits could also be applied singly to one engine family. A suggestion was also made to use banked credits to compensate for SEA failures of production engines. Similarly, many manufacturers wanted to be able to use banked credits to compensate for the emission impacts of in-use failures instead of recalling engine families. They believed this feature would encourage credit accumulation, which would help the environment and would avoid the expense and problems of recall.

EPA supports the use of credits obtained through averaging or trading in the certification process. EPA also supports banking credits for use in future certification and even in the case of SEA failure if a manufacturer chooses to recertify future production of the family involved to a higher FEL. However, EPA cannot allow manufacturers to use credits in lieu of recall to address failures determined by SEA failures or in-use testing. Section 207 of the Clean Air Act states that "manufacturers shall remedy such nonconformity"; and a federal court has held that, by "remedy," Congress meant recall and repair of noncomplying vehicles (*Center for Auto Safety* v. *Ruckelshaus*, 747 F.2d 1, D.C. Cir., 1984). Since the use of credits to compensate for a failure does not constitute a remedy, use of credits in this manner would be in violation of the Clean Air Act.

The banking of credits inherently raises questions about the future value of credits and credit life. Emission credits for banking are generated, and environmental benefits accrue when in-use emissions are below the emission standard. The potential benefits are at their greatest when the low-emitting engine is first placed in service. However, as the vehicle ages and accumulates miles, the amount of potential reduction in emission levels ("credit production") decreases, until the engine is ultimately scrapped and no further reduction in in-use emissions occurs. In addition, since vehicles are normally used less with age, the remaining amount of reduction in in-use emissions decreases each year.

In order for emissions to average to an acceptable in-use level, it is preferable that the credit generating and credit-using engines have some overlap in their operating lifetimes and ideally in their yearly usage. This occurs inherently with trading but not with banking. With this rationale in mind, EPA suggested limiting the life or availability of banked credits to help ensure that the credit-generating engine is still operating when the credits are used. In addition, EPA also suggested the possibility of depreciating the value of banked credits as the engine generating these credits ages. Comments on these suggestions were made and will be summarized below.

Several commenters wanted to limit credit life to prevent long accumulation periods followed by large-scale use which could have both adverse competitive and environmental impacts. Limiting credit life would force manufacturers to use their credits within the allotted time frame or lose them. Some commenters also felt that credits should be depreciated with time. These commenters believed that depreciating credits with time would reduce the possible adverse environmental effects related to banking and would encourage their orderly use in averaging or trading programs.

Conversely, other commenters stated that, in order to maximize the manufacturers flexibility, banked credits should have an indefinite life. Futhermore, they argued that this high level of flexibility would increase the incentive to generate emission credits which, in time, would promote advances in emission control technology. In addition, these commenters believed that supply and demand would prevent large accumulations of banked credits. These commenters pointed out that there is a "holding cost" for banked credits; the time value of money tends to reduce the value of banked credits relative to their use. Moreover, there is a "risk premium" inherent in retaining credits for later use—a firm cannot be sure whether credit prices will be higher or lower in the future. Therefore, in their view, the possibility of large-scale credit use following long accumulation periods would be very small in the situation in question.

As presented in the EPA staff paper and discussed at the aforementioned workshop, development of the credit use rules for banking involves consideration of equity, environmental, and flexibility objectives which are somewhat conflicting. Flexibility considerations suggest no limitations on credit use are necessary, while equity and environmental concerns indicate that some restrictions are prudent. Fully achieving all of these objectives within the scope of a banking program may not be possible, but it is important to maximize the benefits available with full consideration to the importance of the equity and environmental concerns. This view was taken in developing the

rationale for the banking programs proposed in Section IV below.

E. Legal Issues

Any regulation promulgated by EPA must be consistent with the authority and direction provided by Congress within the relevant provisions of the Clean Air Act (CAA). With regard to HDE NO_x and PM emission standards, the relevant portions of the CAA are found in section 202(a)(3). Specifically, section 202(a)(3)(A)(ii) requires EPA to set an HDE NO_x emission standard at a level equivalent to a 75 percent reduction from an uncontrolled HDGE NO_x baseline. This equates to a level of 1.7 g/BHP-hr. Section 202(a)(3)(B) provides that if this standard is not achievable, then the standard for HDE NO_x emissions is to be set at the level which represents the maximum degree of emission reduction most engines can reasonably be expected to achieve in the available lead time. Such revised standards are to be tightened every three years, until the statutory level is reached. Revised emission standards are also to become effective four model years after promulgation. Under section 202(a)(3)(A)(iii), standards for HDE PM emissions are to take effect as expeditiously as practicable and are to reflect the greatest degree of emission reduction achievable with the technology expected for that model year. No statutory standard is established for HDE PM emissions. Clearly, these provisions contemplate technology-forcing emission standards.

The Clean Air Act does not otherwise specify the content of emission standards, leaving the precise form of the standards to be determined by EPA through rulemaking. EPA has traditionally promulgated standards that every vehicle or engine is required to meet, but the statute does not explicitly preclude standards that permit two or more vehicle models or engine families to achieve the required reductions by averaging their emissions together.

EPA set the 1991 and later model year HDE NO_x and PM standards as averaged standards; that is, EPA provided that the standards could be met by offsetting the above-standard emissions of one engine family with the below-standard emissions of another. Accordingly, engine families that emit at levels higher than the standard will still comply with the standard so long as the emissions from those engine families, when averaged with the emissions from other engine families, do not exceed the standard. Moreover, EPA set the standards with averaging in mind, so that averaging is integral to the standards themselves.

As noted earlier, trading and banking are simply forms of averaging between manufacturers and over time. Thus, they pose similar legal issues. Just as the statute does not explicitly address EPA's authority to allow averaging, it does not address the Agency's authority to permit banking and trading. EPA's authority to allow trading and banking, as well as averaging, consequently depends on whether these programs will support and be consistent with the provisions and goals of the Act.

Given the statute's technology-forcing scheme, banking and trading programs must not undercut the stringency of already established emission standards and must promote the achievement of the greatest degree of emissions reduction available now and in the future. More generally, banking and trading programs must support and be consistent with the provisions and goals in the CAA.

The commenters were split in opinions as to whether banking and trading would be consistent with the CAA. Some commenters believed that banking and trading would provide manufacturers with an incentive to develop and apply new technology, since the resulting emission credits would be marketable and would therefore promote the greatest degree of emission reduction achievable. Other commenters believed that banking and trading would have the opposite effect. One commenter stated that banking and trading would "greatly water down the emissions reduction standards" but did not explain how this would happen. Another commenter stated that the emission standards for 1991 and beyond were so stringent that his firm would not be able to generate any credits. Therefore, banking and trading would not provide that firm with an incentive to further reduce emissions.

The commenters also referred to the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *NRDC* v. *Thomas*, 805 F.2d 410 (1986). The case concerned the HDE NO_x and PM standards promulgated by EPA on March 15, 1985 (51 FR 10606). One issue in the case was the legality of HDE NO_x and PM emissions averaging. The court rejected the specific challenge of averaging made by one of the petitioners (whether averaging was inconsistent with the statute's provision of NCPs) but also expressed reservations about its legality. Not surprisingly then, both sides referred to this case as support for their respective views.

Additional comments concerning the legality of banking and trading were also made. One commenter stated that section 206(a)(1) of the CAA authorizes EPA to provide for banking and trading, since new motor vehicle engines are to be tested "in such manner as (the Administrator) deems appropriate." However, another commenter stated that Congress never intended or authorized EPA to adopt banking and trading. That commenter believed that NCPs were the Congressional solution for non-conforming engines. A third commenter stated that the availability of credits would be testimony that not all engine families achieved the maximum degree of emissions reduction achievable and that further reductions in the emission standards are therefore feasible and needed.

EPA believes the proposed HDE banking and trading programs promote the purposes of the Clean Air Act. The proposed programs would encourage manufacturers to make emission reductions in the most expedient manner and would provide them with additional incentives to develop more efficient control technologies and to introduce lower emitting methanol-fueled engines quickly. A banking program in particular would promote achieving emissions reduction quickly. To generate future credits, engines would have to be certified at levels below the emission standards. Thus, a banking program would encourage the development and expeditious use of more efficient control technology and lower-emitting methanol-fueled engines. Furthermore, any new technology developed to generate emission credits could provide a basis for a later finding that a more stringent emission standard is feasible for the future.

Since banking and trading are extensions of averaging, the court ruling on the HDE averaging program has implications for banking and trading programs. As noted earlier, the court in *NRDC* v. *Thomas* upheld the averaging program promulgated by EPA, since it disagreed with the petitioner's argument that averaging was inconsistent with the statute's provision for NCPs. To the extent trading and banking programs do not conflict with the NCP provision, they too should survive legal challenge on this ground.

However, the court also noted another reason why averaging may not be authorized under the CAA. The court observed that CAA section 206, which governs certification of vehicles for compliance with emission standards, speaks in terms of "any," "a," or "such" vehicle being tested for certification purposes. It pointed out that under averaging *some* vehicles would not be required to comply with the standards.

This practice, the court stated, appeared inconsistent with the requirement that "any," "a," or "such" vehicle or engine be tested and required to comply with emission standards.

At the same time, the court noted that the statutory language was ambiguous. It pointed out that the testing and certification provisions empower the Agency to test vehicles in the manner it deems appropriate, so as to conform to the prescribed standards. These provisions thus leave room for the counterargument that the manner of testing or the content of the standards themselves is within the Agency's discretion. However, the court suggested that such a counterargument would have to overcome legislative history that appeared to indicate that Congress wanted every vehicle to meet emission standards. The court did not rule on the merits of this argument because no commenter had raised it during the public comment period for the HDE rulemaking. It instead set out the point for the Agency's future consideration. (See 805 F.2d 425.)

EPA does not believe that the statutory text or legislative history cited by the court necessarily means that the CAA requires or that Congress intended that every vehicle or engine family emit at the same level. As the court itself noted, the Act gives EPA broad latitude in the testing of vehicles and, more fundamentally, in the formulation of standards. EPA promulgated the HDE NO_x and PM emissions standards as averaged standards. It thus follows that in testing "any" engine for compliance with those standards, EPA may hold particular engine families to different control levels as part of an averaged set of engine families so long as the engine families' average emission levels meet the applicable standard.

The legislative history cited by the court is not adverse to this approach to standard-setting. The passages criticize pre-1970 tests for determining compliance with standards based on the average emission levels of prototype vehicles and state that emissions from prototype vehicles should not be averaged in the future. However, it is not clear from these passages whether the tests to which they refer involved averaging individual members of a single vehicle model or averaging four different vehicle models. This distinction is important since EPA's current averaging program and its proposed banking and trading programs would not allow averaging within an engine model or family but only between engine families.

Other passages of the legislative history indicate that the pre-1970 tests averaged emissions from individual members of a vehicle model to determine whether the model met applicable standards. (*See* Senate Rep. No. 91–1196, 91st Cong., 2d Sess. (1970); *reprinted in* 1 U.S. Library of Congress, A Legislative History of the Clean Air Act Amendments of 1970, at 429.) Accordingly, the passages cited by the court should be read to forbid averaging emissions of individual vehicles within a single model. At the same time, the legislative history does not similarly forbid averaging emissions of different vehicle models.

A thorough reading of the legislative history reveals the fundamental problem that Congress sought to address in revising the vehicle testing provisions: degradation of emission controls from prototype to production to in-use vehicles. Studies before Congress at the time the Act was being amended showed that while prototype vehicles generally met applicable standards, production and in-use vehicles often did not. To ensure that emission reductions demonstrated by prototype vehicles were realized in practice, Congress authorized production-line testing of vehicles (section 206(b)), required manufacturers to warranty vehicles for compliance with emissions standards throughout their useful life (section 207(a)), and provided for recall of noncomplying in-use vehicles (section 207(c)).

EPA's averaging program and proposed banking and trading programs respect the Congressional scheme for ensuring that vehicle emission controls perform as designed. Manufacturers would be required to designate for each engine family involved in the programs a family emission limit (FEL), such that FELs average to the level of the applicable standard. Each engine within each family involved in the programs would then be required to meet the family emission level (FEL) for its family. Accordingly, production-line and in-use testing would determine whether every engine involved in the programs was meeting its FEL. Similarly, every engine involved in the programs would be warrantied to meet its FEL. The proposed programs would thus preserve Congress' goal of realizing the emissions reductions demonstrated by prototype vehicles.

In short, EPA considers the legislative history cited by the court no bar to averaging, trading or banking. On the contrary, the Agency believes that its averaging and proposed trading and banking programs accommodate Congressional intent as expressed in the legislative history. In any event, Congress granted EPA discretion in formulating standards and test procedures, and thus it is not necessary to find explicit authorization to promulgate banking and trading programs. As discussed above, the relevant inquiry is whether trading and banking are consistent with the goals and intent expressed in other applicable portions of the Act.

EPA also agrees that, like averaging, banking and trading would provide another way besides payment of NCPs for engines to meet emission standards. However, like averaging, banking and trading would not obviate the need for NCPs. A manufacturer unable to obtain credits either from his own fleet or from a competitor may have no choice but to pay NCPs for his engines that cannot meet a standard. The court decision to uphold averaging rested in part on its finding that averaging did not make NCPs superfluous. Moreover, trading would accomplish one of the express goals of the NCP provision—to remove any competitive disadvantage from complying manufacturers—since the price of credits would reflect the economic cost of obtaining the standard technologically.

Banking and trading programs would also be useful even if all engines could comply with the baseline emission standard. Banking and trading programs would allow manufacturers to optimize their emission control strategies, thereby reducing costs. EPA is statutorily required to consider costs in the design of its mobile source regulatory programs, and the provision of banking and trading to cut cost logically follows from that requirement.

EPA disagrees with the assertion that the availability of credits would imply that all engine families did not achieve the maximum technologically feasible limit. As required by the CAA, emission standards are to be set at the lowest level practicably achievable with the technology available, considering factors such as fuel economy, cost, etc. Within those constraints, EPA sets emission standards at levels which most families are expected to be able to meet, given the technology available or expected to be available by the effective model year.

In at least two situations, all engines could be meeting a standard based on "maximum feasible reductions," and yet emission credits could be generated. First, engines have somewhat different emission characteristics. Since EPA sets standards based on what most engines can achieve, some may be capable of achieving greater emission reductions than required by the standard, while, for others, it may be difficult to just meet

the standard. Second, some manufacturers may develop improved or new emission control technology which surpasses that projected to be available when the emission standards were promulgated. These developments could provide the opportunity to generate emission credits. In both of these situations the maximum reductions judged feasible at the time the emission standard was promulgated would be achieved. If improved or new control technology is used to generate emission credits, it may provide the technical basis for a more stringent standard in the future. Banking and trading may even provide the incentive for such developments. To the extent that banking and trading programs encourage new technology, these programs promote the purposes of the CAA.

The proposed banking and trading programs discussed below are workable, should not result in increases in nationwide or local emissions, and should have no adverse equity or competitive effects. In addition, no aspect of either program is explicitly prohibited by the CAA. Trading and banking programs encourage manufacturers to develop and implement more efficient control technologies which could reduce overall costs and serve as the technological basis for more stringent emission standards in the future. Thus, EPA believes the programs as structured are consistent with and promote the goals of the Clean Air Act.

IV. Description of the Proposal and Rationale

EPA has carefully evaluated the issues raised and comments received thus far regarding banking and trading. In light of these comments, EPA has developed the proposed programs that are described below together with the rationale for their design. In some areas of the proposed programs, it appears that increased program flexibility might be possible. However, EPA lacks the technical data to propose such increased flexibility. Along with the proposal, the Agency has provided alternatives that would increase program flexibility. If EPA obtains information sufficient to support promulgation of these alternatives, it may include them in the final rule.

The criteria applied in formulating the proposed programs were essentially the same as those laid out in EPA's September 1986 Staff Paper. In summary, these criteria are: (1) The programs should not cause adverse air quality effects either nationwide or locally; (2) the programs should not cause adverse equity or competitive effects; (3) the programs must be workable and practical to implement and enforce for both EPA and the industry; (4) the programs should be consistent with the Clean Air Act and promote its goals; and (5) consistent with the first four criteria, the programs should be as flexible as possible to maximize economic efficiency and enhance competition.

These general principles guided EPA in the development of the existing emission averaging programs and were the basis for the restrictions that were established in those programs. EPA believes that these restrictions are warranted and do not significantly detract from the utility of averaging. Therefore, EPA also believes that, in most cases, these restrictions should be continued in any potential banking and/or trading programs. However, in view of the desire to maximize the manufacturers' flexibility and to promote the use of alternative-fueled engines, several additional provisions are being proposed for "expanded" averaging, trading, and banking programs.

The following discussion describes in detail the proposed banking, trading, and expanded averaging programs, along with the rationale for each decision. The discussion is broken into seven subsections: Definitions; Program Structure; Credit Use; Credit Calculation; Certification, Compliance and Enforcement; Banking; and NCP Interactions. Comments concerning the proposed banking, trading, and expanded averaging programs, along with the alternatives, are requested.

A. Definitions

To help to define the proposed programs and to clarify which heavy-duty engines would be allowed to average, trade, and bank, two new phrases need to be defined. These new definitions are contained in § 86.090–2 of the proposed regulations.[11]

A "heavy heavy-duty engine" (HHDE) category would be established to include all heavy-duty engines that are intended for vehicles that exceed a 33,000 lbs gross vehicle weight rating (GVWR).

The phrase "averaging set" would be established to indicate a subcategory of heavy-duty engines among which averaging and trading of emission credits would be allowed.

Other key terms used in describing the proposed programs are already defined in Subpart A of 40 CFR Part 86, as are many of the abbreviations used. Many of the acronyms used here were also defined in Section II of this notice.

B. Proposed Program Structure

The proposed "averaging sets" will be discussed according to vehicle category. A discussion of possible alternative structures will then follow. The proposal and alternative structures include all HDDEs, HDMEs, and HDGEs. Inclusion of HDEs using other fuels will be considered in the future as federal emission standards are developed for them. References will be made to Figure 2, which shows the proposed sets for averaging and trading of NO_X credits, and to Figure 3, which shows the proposed sets for averaging and trading of PM credits. The figures characterize engines by engine cycle and fuel type versus the subclass or GVW rating. Urban bus engines are in a separate category in Figure 3. In both figures, each type of hatched boxes represents a given averaging set.

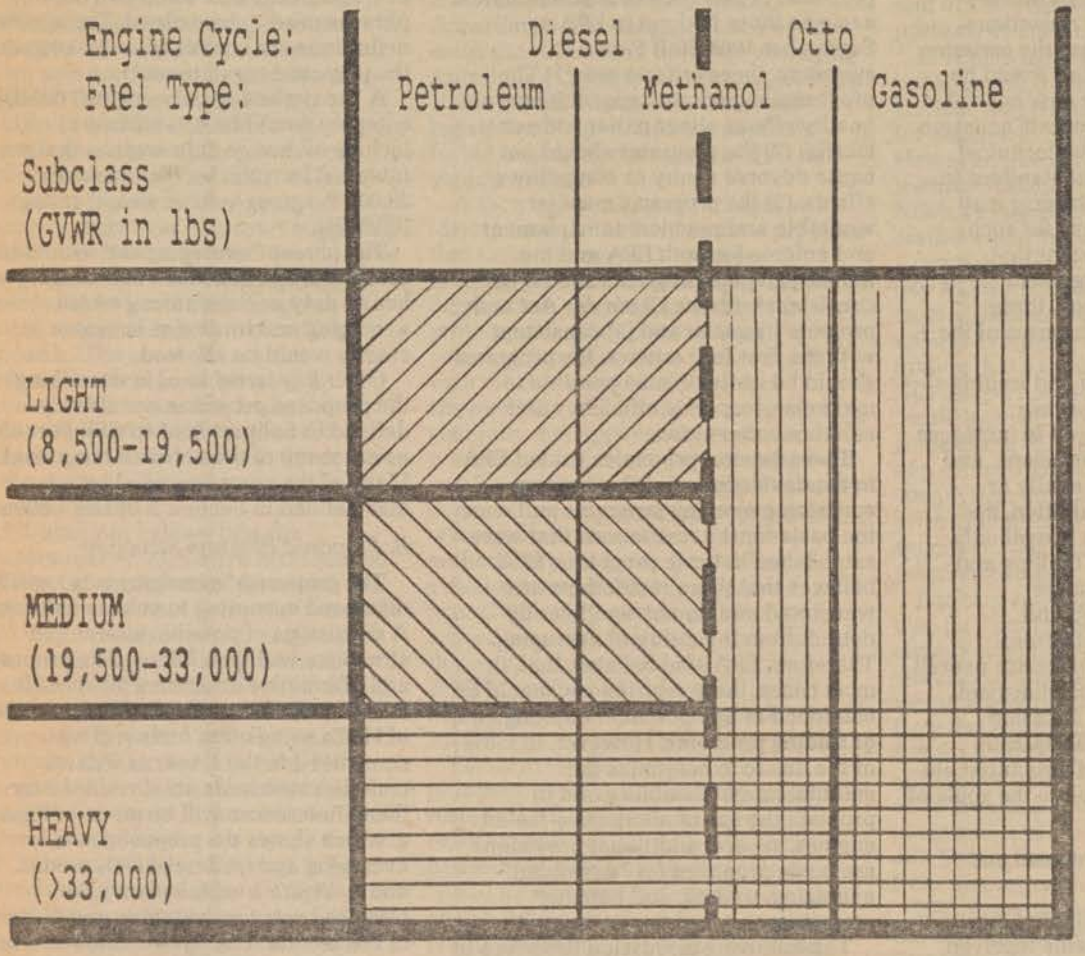
BILLING CODE 6560-50-M

[11] Other phrases for averaging, trading and banking are also defined in § 86.090–2.

Figure 2

PROPOSED NOx AVERAGING, TRADING, AND BANKING RESTRICTIONS

(Heavy-Duty Engines)

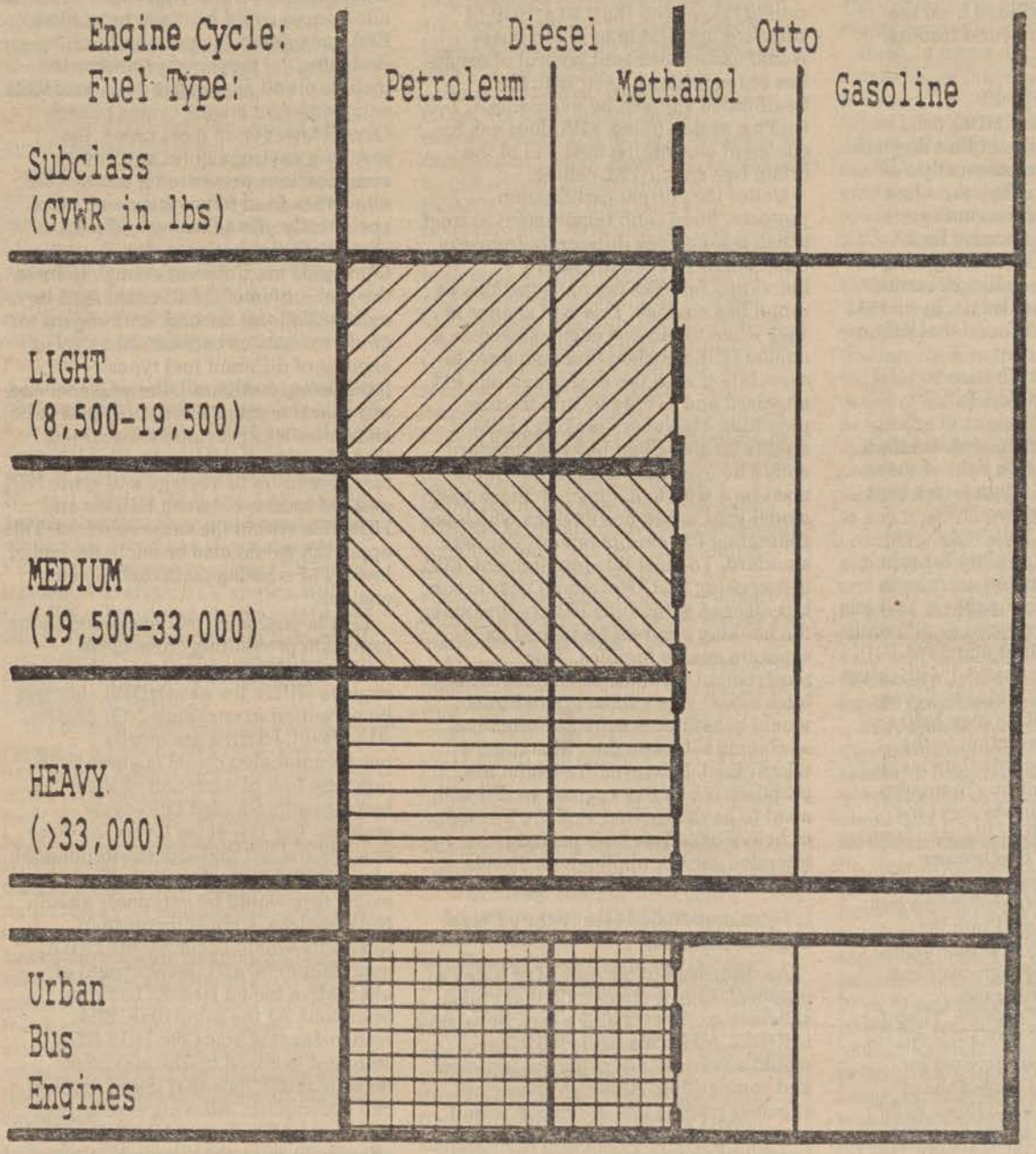


NOTES:

Engine families within a given hatch pattern may average and trade with other engine families within the same pattern. Engine families within the cross-hatch pattern may average and trade with engine families from either hatch pattern involved, but not both.

Figure 3

PROPOSED PM AVERAGING, TRADING, AND BANKING RESTRICTIONS
(Heavy-Duty Engines)



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As in the existing averaging program, HDEs certified under the California emission control program are to be treated separately from HDEs sold in the other 49 states and are not eligible to either generate or use emissions credits. Also, HDEs certifying as light-duty trucks under § 86.085–1(b) of 40 CFR Part 86 would be excluded from the proposed HDE banking and trading programs.

1. Urban Bus Engines

Heavy-duty engines (HDE) used in urban buses are unique in that they are designed for and operate mostly in urban environments. They therefore become a special concern in the discussion of HDEs, because their operation has direct local air quality impacts. EPA is especially concerned with urban particulate levels. In its 1985 HDE rulemaking EPA found that urban buses make a significant and disproportionate contribution to total urban particulate loading. In comparison, NO_x emissions in urban areas posed a less acute problem than particulate emissions. In light of these facts, EPA excluded urban buses from PM averaging but not from NO_x averaging. EPA also believed that a separate PM averaging class for urban buses would be of limited usefulness since it was considered unlikely that bus emissions could be reduced significantly below the 0.10 g/BHP-hr standard.

EPA is still very concerned with urban particulate levels. EPA also believes that urban bus HDMDEs may help provide a long-term solution to the reduction of overall particulate levels. While EPA could continue to require every urban bus engine to meet the upcoming 0.10 g/BHP-hr PM standard, the Agency believes that greater reductions could eventually be made by allowing alternative-fueled urban bus engines to be introduced into the market. EPA believes that averaging, trading and banking programs are a viable way to encourage the introduction of these engines. Therefore, as shown in Figure 3, EPA proposes to create a separate averaging set for urban buses with the allowance of cross-fuel PM credit exchanges within the diesel cycle (*i.e.*, methanol- and petroleum-fueled diesel engines). This is a change in policy. EPA believes this new provision would promote the use of alternative-fueled engines, such as methanol, in urban bus engines. However, in a manner similar to the existing averaging program, EPA is not proposing to treat urban bus engines separately from other HDEs within the proposed NO_x averaging, trading, and banking programs.

Since urban bus PM averaging, trading, and banking for diesel-cycle HDEs is being proposed for the first time, EPA must also propose a ceiling above which no family may be certified. EPA proposes a ceiling of 0.25 g/BHP-hr, the standard applicable to other HDEs beginning in the 1991 model year. This ceiling taken with the 0.10 g/BHP-hr standard applicable to urban buses would assure stringent control of urban bus PM emissions, even with the flexibilities allowed by averaging, trading, and banking. EPA does ask for comment concerning the level of the urban bus engine FEL ceiling.

Under the current certification protocol, there is no requirement to treat urban bus engines differently from any other HDEs or even to identify individual families or configurations as urban bus engines. This will change in 1991 when urban bus engines become a unique HDE subclass/averaging set in association with the new urban bus PM standard and averaging and trading programs. However, banking of PM credits for the urban bus PM standard would be available in 1990, and there must be a way to distinguish those 1990 model year urban bus engines which are generating PM credits toward the 1991 standard. To meet this requirement, EPA is proposing that 1990 model year urban bus engines generating PM credits under the banking program be placed in separate engine families. This requirement would continue in 1991 and later model years since urban buses would constitute a separate subclass/averaging set when the PM standard takes effect. However, for useful life purposes urban bus engines would still need to be designated as light, medium or heavy based on their primary intended service application. This is described in 40 CFR 86.090–2.

2. Petroleum-fueled Heavy-duty Diesel Engines (HDDEs)

As discussed in Section III of today's proposal, EPA is concerned that cross-subclass credit exchanges (*i.e.*, between LHDDEs, MHDDEs, and HHDDEs) would adversely effect the environment and competition. Although cross-subclass trading and averaging would make possible greater manufacturer flexibility and economic benefits, EPA cannot implement such an approach unless it finds such effects would not occur or could be avoided. For example, better data regarding the subclasses' useful lives and appropriate urban fractions are needed to characterize any potential problem or identify a solution. Therefore, similar to the existing HDE NO_x and PM averaging programs, EPA proposes to allow averaging and trading within each of the three subclasses, but not between them, as shown in Figures 2 and 3. A possible alternative structure which would allow cross-subclass credit exchanges is described later in the proposal section.

EPA examined the issue of cross-cycle and cross-fuel credit exchanges to see if allowances could be made here. First, EPA considered the possibility of designing the proposed programs to include credit exchanges between HDEs using different engine cycles (diesel, Otto). However, in most cases, the resulting environmental and equity complications prevented a cross-cycle allowance from being proposed. More specifically, the emission and use characteristics between diesel- and Otto-cycle are different enough to force the prohibition of credit exchanges in most situations. Second, with regard to credit exchanges between like-cycled engines of different fuel types (petroleum, methanol), the emission and use characteristics are anticipated to be similar as was previously discussed. EPA therefore proposes to allow manufacturers to average and trade NO_x and PM credits between HDDEs and HDMDEs within the same subclass. This approach would also promote the use of lower PM emitting methanol-fueled engines.

EPA is proposing one exception to the provision prohibiting cross-cycle exchanges. That is, proposing that engines within the new HHDE subclass be permitted to exchange NO_x credits. At present, HHDEs are mostly petroleum-fueled diesel engines, with only one-half of a percent of the sales being gasoline-fueled Otto-cycle engines. The low sales levels for these engines suggest that any environmental or equity impacts of cross-cycle exchanges would be extremely small. Nevertheless, a slight increase in flexibility would occur for the HHDE manufacturers, and development of alternative fueled HHDEs could be promoted. At the same time, EPA recognizes that since the HDE NO_x standard is based on the maximum feasible reductions that diesel engines can accomplish, allowing exchanges between HHDGEs and HHDDEs could effectively relax the standard in terms of it being technology forcing for HHDDEs. There is also a concern that if manufacturers promote the use of gasoline-fueled Otto-cycle HHDEs at the expense of petroleum-fueled diesel-cycle HHDEs to gain NO_x credits, an overall increase in HC and CO emissions would result.

Accordingly, if there is a significant shift to gasoline-fueled HHDEs in order

to obtain NO_x credits, EPA will consider limiting this flexibility. This proposal applies only to NO_x credit exchanges. This proposal does not provide for cross-cycle exchanges of PM credits since there are no PM standards or test procedures for Otto-cycle engines. However, the Agency is interested in comments on the need for such a program and on ways to implement a program allowing averaging, trading, and banking of PM credits.

3. Gasoline-fueled Heavy-duty Otto-cycle Engines (HDGEs)

HDGEs are presently required to meet NO_x emission standards but not PM emission standards. Therefore, in the existing averaging program, HDGEs are allowed to participate only in NO_x averaging. Since no HDGE PM standards are proposed, this NO_x-only structure is being kept in today's proposal.

Consistent with the present averaging program, EPA proposes to allow HDGEs to trade NO_x credits with other HDGEs. Since HDGEs and HDMOEs have the similar emission characteristics (high HC and CO, low NO_x and PM), and EPA anticipates that they will have similar applications and use characteristics, EPA also proposes to allow HDGEs to trade and average NO_x credits with HDMOEs. For the environmental and equity reasons described in Section III, cross-cycle NO_x exchanges with diesel HDEs are not proposed, with the exception of HHDEs.

In addition, referring to the footnote in Figure 2, for each Otto-cycle heavy heavy-duty engine family participating in the NO_x programs, the manufacturer must state at certification whether the NO_x credits generated by that family will be used with other heavy heavy-duty engines or with non-heavy heavy-duty Otto-cycle engines. Simultaneous credit exchanges with both other heavy heavy-duty engine families and non-heavy heavy-duty Otto-cycle engines will not be allowed. This will eliminate the possibility of one or more manufacturers circumventing the restrictions within the averaging and trading programs through multiple credit exchanges.

4. Methanol-fueled Heavy-duty Engines (HDMEs)

Methanol-fueled heavy-duty engines are unique in that they can be designed for either the diesel- or Otto-cycle. Since these cycles result in different emission characteristics, HDMEs are treated as either HDMDEs or HDMOEs, and each category is subject to different emission standards. In the existing averaging program, HDMDEs may not average with HDMOEs. EPA is not planning to change this general approach as it is consistent with the restrictions for HDDEs and HDGEs. EPA is proposing trading and banking for HDMEs, but only between engine families using the same combustion cycles. The exception to this will be discussed later. Cross-subclass credit exchanges between HDMDEs would still be prohibited as they are for HDDEs.

As noted above, HDMDEs and HDMOEs have diffent emission characteristics due to the differences in combustion cycles. However, because of a similarity in combustion cycles, HDMDEs and HDDEs both emit relatively high NOx and PM and low HC and CO, while HDMOEs and HDGEs both emit relatively high HC and CO and low NOx and PM. Due to these likenesses in emission characteristics and the anticipation that HDMDEs and HDMOEs would compete with and replace HDDEs and HDGEs, respectively (*i.e.*, similar applications), EPA is proposing to allow HDMDEs to average and trade with HDDEs (within the same subclass) and to allow HDMOEs to average and trade with HDGEs. Without creating environmental complications, this provision would provide greater flexibility for all manufacturers, which, in turn, would create an incentive for development and marketing of HDMEs.

As previously mentioned, methanol-fueled diesel-cycle urban bus engines would be allowed to exchange PM credits with petroleum-fueled diesel-cycle urban bus engines. EPA is also proposing to allow cross-fuel exchanges of NOx credits between all methanol-, diesel-, and gasoline-fueled HHDEs. These exchanges could be made regardless of whether the engine uses an Otto or diesel combustion cycle.

As before with HDGE families, a manufacturer of heavy HDMOE engine families participating in averaging, trading, *and* banking programs would have to state at certification whether the family would be exchanging NOx credits with other HHDEs or with non-heavy HDMOEs and HDGEs. Simultaneous credit exchanges with both other heavy heavy-duty engine families and non-heavy HDMOEs and HDGEs engine families would not be allowed. This would eliminate the possibility of one or more manufacturers circumventing the averaging and trading program restrictions through multiple credit exchanges.

5. Alternative Structure

EPA recognizes that increased flexibility and economic benefits could potentially be obtained if some form of cross-subclass averaging and trading were allowed for HDDEs and HDMDEs. However, cross-subclass averaging and trading are not being proposed due to concerns that they could result in adverse environmental and equity effects. The following paragraphs discuss both the environmental and the equity concerns in detail.

First, in terms of environmental concerns, as previously discussed in Section III, HDDEs (and presumably future HDMDEs) in different subclasses differ widely in urban usage fractions, useful life periods, rebuild practices and emission characteristics, and usage and operating patterns (load/speed profiles, etc.). All of these characteristics would affect the lifetime NOx and particulate emissions from these engines.

If cross-subclass credit exchanges were allowed under averaging and trading, then a new method would have to be developed to account for the full range of differences in vehicle/engine usage and the consequent variations in emissions. As previously discussed, credits could be multiplied by prorating factors that would "normalize" credits to a common base. A separate factor could be used for each area of concern, and these could all be combined into one overall prorating for each of the possible subclass averaging/trading combinations. Unfortunately, EPA lacks sufficient data to adequately or accurately determine the values needed for the prorating factors.

EPA does have some limited data on average urban usage patterns in a given subclass. Based on these data, the average ratio of urban to total miles is about 0.64 for LHDDEs, 0.52 for MHDDEs, and 0.30 for HHDDEs. Because of this wide range in urban usage, two separate credit checks would have to be made for each cross-subclass transaction: an urban credit check and a total credit check. The manufacturer (engine family) supplying credits would have to provide credits sufficient to cover the receiving engine family's overall, as well as urban, emission deficit. Due to the differences in urban usage, cross-subclass transactions would usually result in "extra" credits being supplied in either the urban or total credit category. Moreover, while a methodology to account for urban usage factors might be possible, currently available data are insufficient to establish the accuracy of these typical fractions. In addition, it cannot be known how representative these urban usage factors would be of the vehicles participating in averaging, banking, and trading. This is especially a concern since the urban fraction information

now available is based on average values, and nothing is known of the distribution around the average value. Since the trading program, like the averaging program, would be voluntary, it is not known whether participating engine families would be representative of the typical fractions.

The uncertainty caused by voluntary participation and lack of detailed data also applies to exchanges between engine families with different useful life periods. Within a subclass, the actual useful lives of the participating engine families are at least approximated by the subclass useful life value specified in emission regulations. Thus, a cross-subclass restriction largely avoids the possibility of averaging engines with dissimilar useful lives. However, if cross-subclass exchanges were permitted, the possibility that the actual useful lives of the participating families would not be representative of the subclass useful life values prescribed in the regulations could cause emission increases. For example, although the data are limited, useful lives can vary from 85,000 to 195,000 miles for non-sleeved engines (LHDDEs and some MHDDEs) and from 123,000 to 308,000 miles for sleeved engines (HHDDEs and some MHDDEs).[12] One report stated that trucks used specifically for long-haul driving run 37 percent longer before overhaul than do other trucks.[13] This report also stated that diesel engines in large fleets run 9 percent longer before overhaul than diesel engines in small fleets. With such large variations in useful lives, ensuring that the "average" in-use emissions from cross-subclass trading (and averaging) would not exceed those anticipated by the emission standards becomes difficult.

Closely related to the useful life concern are a number of questions regarding rebuilds. How does rebuilding affect engine emissions? How does rebuilding affect engine life? How often are HDDEs rebuilt before being scrapped, at what intervals and what percent of HDDEs are rebuilt? Rebuild data is extremely limited. EPA knows of no data on the rebuild emission characteristics of HDDEs certified on the transient test procedure; and, of course, predicting the rebuild emission characteristics of HDDEs and HDMDEs certified to the 1991 NOx and PM standards is problematic at best. In the *Fleet Maintenance & Specifying* report cited above, the number of non-sleeved HDDEs rebuilt varied from 48 to 81 percent (depending on engine owner/application), and the miles after overhaul ranged from 64,000 to 162,000. While it is believed that almost all sleeved HDDEs are rebuilt at least once (essentially all HHDDEs and some MHDDEs), the miles after rebuild range from 97,000 to 268,000. However, EPA has no information on the percentage or frequency of rebuilds for any HDDEs after the first rebuild. Thus, it is quite difficult to develop prorating factors to address rebuilt engine emission effects.

Usage patterns also vary between vehicles. The CAPE21 data used to develop the transient test cycle indicated that, as expected, differences do exist in revolutions per minute, power, and speed characteristics between HDDEs operated in urban areas.[14] The mean percent revolutions per minute of a mean trip can range from 16 percent to 84 percent when comparing New York non-freeway travel to Los Angeles freeway travel, respectively. The mean percent power of a mean trip can range from 16 percent to 55 percent for these same categories. Once again, since averaging and trading would be voluntary, ensuring that the emission values determined from the HDDE test cycle would represent typical in-use operation from participating engines would be difficult.

Thus, at present, EPA lacks sufficient data to propose prorating factors required to ensure that environmental degradation would not occur from cross-subclass credit exchanges. Presently, there is no data available for HDMDEs. Comments and additional data on these issues are requested.

Another area of concern from cross-subclass credit exchanges is the possibility of adverse equity effects. One manufacturer has commented that any form of averaging, trading, and banking is inequitable because different manufacturers would benefit to different degrees from the flexibility the programs would provide. It follows that allowing cross-subclass exchanges would increase the flexibility for firms with diverse product lines, since they could now average or trade across subclasses, and, therefore, would increase the range of potential benefits available to them. The flexibility of all manufacturers would be increased under cross subclass averaging and trading. However, from the commenter's perspective, although their total flexibility would also increase, smaller manufacturers would have less flexibility than larger firms since they could not average across subclasses (only trade) and, therefore, would gain fewer benefits. This commenter could argue the potential for large manufacturers to benefit more than small manufacturers if large manufacturers have an institutional preference for averaging over trading (since smaller firms could not take advantage of banking and trading programs due to credits being unavailable for purchase). In this scenario (preferential use of cross-subclass averaging by large firms), allowing cross-subclass exchanges would negate the benefits for small firms that the addition of a trading program to the present averaging program could provide.

The disparity in market shares was previously shown in Figure 1. In summary, it showed that 70 percent of the firms each have less than one percent of the entire HDDE market, while twenty percent of the firms each have over 10 percent of the market. Consequently, to the extent the concerns expressed above are valid, small shifts in market shares could have extremely adverse economic impacts for many of the smaller manufacturers. Since equity concerns can not be addressed through prorating, other methods of ensuring equity may need to be implemented. EPA is requesting comments on the equity effects of cross-subclass exchanges and possible methods of addressing the concerns.

Several observations regarding the foregoing discussion can be made. It may be that smaller firms would incrementally benefit more from cross-subclass trading than the larger, more diverse firms; *i.e.*, the degree of flexibility afforded the less diverse firms may be proportionately more than for larger firms. If there is institutional resistance by larger manufacturers to trade with the less diverse manufacturers, the smaller firms would have an incentive to trade among themselves to gain a relative advantage, (assuming credits are available.) It is also worth noting that any institutional resistance to trade by a larger firm could become an expensive policy, insofar as the price of traded credits tended to exceed the firm's value in internal use. In light of these arguments, it is not clear that cross-subclass trading would necessarily have adverse equity effects, but there is cause for concern.

[12] "Diesel Engines," *Fleet Maintenance & Specifying*: May 1981: p. 39–44. This document is available in Docket No. A–81–11.

[13] "A Study to Determine Engine Rebuild Criteria Among Owners of Diesel Powered Vehicles," Survey Data Research, Inc.; May 10, 1981. This document is available in Docket No. A–81–11.

[14] "Summary and Analysis of Comments to the NPRM: 1983 and Later Model Year Heavy-duty Engines Proposed Gaseous Emission Regulations;" Table A–7; December, 1979. This document is available in Docket No. A–80–18.

EPA has studied the cross-subclass issue in-depth and has developed two possible approaches:

1. Keep the proposal as now structured (no cross-subclass exchanges). This approach is the easiest to implement and given the available data appears to address environmental and equity concerns. However, if this approach is promulgated, EPA would still consider revising the programs in the future to allow cross-subclass exchanges when more and better information becomes available.

2. Control the potential adverse environmental and equity effects of cross-subclass credit exchanges to the greatest degree possible. Adverse environmental effects could be minimized by deriving prorating factors with appropriate margins of safety to address the useful life, urban usage, rebuild, usage/operating pattern concerns, and other uncertainties. In addition, total and urban credit balances may need to be calculated and checked. Equity concerns could possibly be addressed by constraints on cross-subclass credit exchanges. Three possible approaches include: (a) Do not allow cross-subclass averaging (but do allow cross-subclass trading) as discussed in Section III; (b) allow one way trading across subclass (but do not allow cross-subclass averaging); or (c) require a given amount of credits to be traded for every credit averaged (*e.g.*,(1:1)).

At this point EPA is proposing the no cross-subclass approach. However, EPA is requesting comments on these and any other approaches, including the detailed and comprehensive data needed to develop the prorating factors; and EPA is also seeking comment on acceptable trading-to-averaging ratios. If mechanisms can be developed to ensure that adverse equity and environmental impacts would not occur, then EPA will consider incorporating these mechanisms and this approach into the final rule.

Finally, as was mentioned above, EPA is proposing to allow NO_x averaging for all HHDEs and is proposing for the first time PM credit exchanges for diesel-cycle urban bus engines. Given the general environmental, equity, and flexibility guidelines provided in the discussion at the beginning of Section III above, EPA had considered allowing cross-fuel and cross-cycle PM emissions averaging, trading, and banking for HHDEs and urban buses in a similar structure as is now proposed for NO_x. However, these provisions are not contained in today's notice due to the lack of applicable PM emission standards and test procedures for Otto-cycle engines. EPA seeks comment on these possible additional averaging, trading, and banking provisions and the issue of promulgating PM emission standards, test procedures, etc. for Otto-cycle engines to allow cross-cycle PM credit exchanges.

C. Credit Use

Emission credits could be averaged, traded, and banked in accordance with the restrictions described in this notice. Banked credits would have to be used in the averaging set where generated and could be redeemed for single family use, averaging, or trading, either at initial certification or during recertification for HDEs produced following a SEA failure. Using emission credits to compensate for previously produced non-complying engines identified as a result of SEA or for in-use failures (*i.e.*, recall) would not be allowed.

D. Credit Calculation

This section describes what a credit is and how EPA proposes to calculate it. The approach is similar to that of the existing HDE averaging program in that it would use family emission limits (FELs). Manufacturers electing to participate in the banking and trading programs would determine, prior to production, emission limits for each engine family to be produced in a given model year. Each limit would have the same relationship to a particular engine family as emission standards currently have to all engine families taken as a whole. The criteria used to distinguish engine families would be the same as those currently in effect in the HDE averaging program and are summarized below.

For each engine family participating in averaging, trading, or banking through credit generation or credit use, the FELs would be set by the manufacturer at levels not greater than a ceiling, above which no engine family would be certified. The FEL is to be specified to 0.01 g/BHP-hr precision for particulate and to 0.1 g/BHP-hr for NO_x. The ceiling values are set by EPA and can be found in sections of the applicable regulations which specifiy the emission standards.

In the existing HDE averaging program, all engine families within a given averaging set essentially have the same useful life since only HDEs within the same subclass can be averaged together. With today's proposal, engine families within a given averaging set may have different useful lives, (*i.e.*, Otto-cycle versus diesel-cycle HHDEs). Therefore, in order to average or trade credits, the credits must be based on the total mass of emissions generated during the families' useful life. EPA is therefore proposing to eliminate the equation used in the existing HDE averaging program and to replace it with one equation that would be used in all of the HDE averaging, trading, and banking programs.

The equation would be used to calculate the amount of credits that are available or required for averaging, trading, and banking. The credit calculation would be made for *each* participating engine family using the emission "delta" between the emission standard and the FEL. FELs above the standard would result in negative credit values, indicating that emission credits are required in order to certify that family. FELs below the standard would result in positive credit values, indicating that emission credits are available to average, bank, and/or trade. The number of credits (positive or negative) would be proportional to the U.S. production volume.

To calculate the mass of emissions generated by an engine family, a conversion factor is required to change the emissions rate (g/BHP-hr) to a lifetime total mass of emissions (Mg—Megagrams). One of two equations could be used to accomplish this. Equation (1) uses a transient-cycle conversion factor (CF), as shown below:

$$Cr_f = (\text{Std-FEL})(CF)(UL)(\text{Engines Produced})(10^{-6}) \quad (1)$$

where

Cr_f = Family credits (total mass of family emissions in Megagrams)
Std = Existing emission standard in g/BHP-hr
FEL = Family Emission Limit in g/BHP-hr

$$CF = \frac{\text{Transient Cycle BHP-hr}}{\text{Equivalent Mileage of Transient Cycle}}$$

UL = Useful life in miles (as described in Section 86.090–2 or in Section 86.090–21 (f), of Subpart A of 40 CFR Part 86)
$10^{-6} = 10^{-6}$ Megagrams per gram

As shown, the conversion factor (CF) is a combination of two numbers: the work delivered (BHP-hr) during the transient cycle and the equivalent mileage of the transient cycle. The delivered work used in this equation would be the same delivered work presently used to determine the emission rate (g/BHP-hr) for certification purposes. This value is engine-family specific. The equivalent mileage used for the conversion factor is 6.5 miles for the HDDE transient cycle and 6.3 miles for the HDE Otto transient cycle. These numbers were obtained by multiplying the average speed of a chassis cycle trip (19.45 miles per hour) by the duration of the HDE transient

cycles (1199 seconds for the diesel cycle, 1167 seconds for the Otto cycle).[15]

Complication arises when choosing a conversion factor for an engine family with two or more configurations, chosen by EPA for testing (as described in 40 CFR 86.085–24). In the current 1991 averaging program, a production-weighted average of the conversion factors is used to determine compliance with the emission standards. A similar approach is proposed for banking and trading. However, this approach involves a degree of complication, since the emission credits would be initially based on projected sales in two cases—in calculation of the total credits (from the above equation) and in the determination of the conversion factor—neither of which would be settled until the end of the model year with actual production numbers. Thus, for engine families with more than one configuration EPA asks for comment on basing the conversion factor on one of the following possible alternatives and asks for additional suggestions:

(1) The highest sales configuration (based on projections which would have to be verified),

(2) The configuration with the highest brake specific fuel consumption,

(3) The configuration with the highest emission certification level,

(4) The configuration with the highest conversion factor when the engine family needs credits and the lowest conversion factor when the engine family generates credits.

Equation (2) would use the latest EPA HDE emission rate conversion factors used in air quality modeling (*e.g.*, the "MOBILE" programs). This equation is shown below:

$Cr_f = (Std\text{-}FEL)(Factor)(UL)(Engines\ Produced)(10^{-6})$ (2)

where

Cr_f, Std, FEL, and UL are the same as in equation (1) Factor = EPA Conversion Factor in BHP-hr/mi

At present, the EPA conversion factors are as follows: LHDDE, 0.92; MHDDE, 2.07; HHDDE, 3.10; HDGE (<14K GVW), 0.81; HDGE (>114K GVW), 1.35; HDDE (Urban Buses), 3.24; HDME, unknown.

With equations (1) and (2), credits are to be calculated to the nearest one-tenth of a Megagram (0.1 Mg). Also, the value of Cr_f would be positive or negative depending on the relative magnitudes of the Std and FEL terms. Positive Cr_f values indicate the amount of credits available for averaging, trading and/or banking. Negative Cr_f values indicate the amount of credits needed.

Based upon the information presently available, EPA believes equation (1) (transient-cycle approach) is the best method of converting an emissions rate to total emissions, since the factors would represent the particular engine family involved rather than an entire subclass. At present, EPA also lacks adequate data to determine appropriate BHP-hr/mi factors for HDMEs, as would be required for equation (2). EPA asks for comments on both equations and on other potential equations. The equation that EPA will promulgate will depend on the record developed.

The example below demonstrates how credits would be calculated, using equation 1. If equation 2 is used, the only change would be in the conversion factor.

Example

A manufacturer wants to produce three MHDDE families that can be optimized at different emission levels. Two families can easily meet the 1991 and later model year 5.0 g/BHP-hr NO_x emission standard, but one family can not. The manufacturer therefore wants to know if the two families that can meet the standard could generate enough credits to average with and so bring into compliance the higher emitting engine family. The manufacturer also wants to know if any credits will be left to trade or bank. The manufacturer has chosen the following FELs, has projected to produce the following number of engines, and has already tested for the work generated during the HDDE transient cycle, as shown below.

Family A: FEL = 4.0 g/BHP-hr NO_x; 12.8 BHP-hr; 200 engines

Family B: FEL = 6.0 g/BHP-hr NO_x; 16.5 BHP-hr; 180 engines

Family C: FEL = 4.5 g/BHP-hr NO_x; 11.6 BHP-hr; 150 engines

As previously discussed, the equivalent mileage of the heavy-duty diesel transient cycle is 6.5 miles. The manufacturer has chosen not to certify under the alternative useful life option. Therefore, the manufacturer will use the 185,000 miles designated as the useful life for MHDDEs. Knowing the above, the projected credits are calculated according to equation (1).

A: $Cr_f = [(5.0–4.0)g/BHP\text{-}hr](12.8\ BHP\text{-}hr/6.5\ miles)(185{,}000\ miles)(200\ engines)(10^{-6})$

$Cr_f = 72.9$ Mg

B: $Cr_f = (5.0–6.0)(16.5/6.5)(185{,}000)(180)(10^{-6})$

$Cr_f = -84.5$ Mg

C: $Cr_f = (5.0–4.5)(11.6/6.5)(185{,}000)(150)(10^{-6})$

$Cr_f = 24.8$ Mg

At this point, the manufacturer knows that projected credits equaling 84.5 Mg are needed in order to certify Family B. The manufacturer may choose to obtain 72.9 Mg of these credits from Family A and the difference, 11.6 Mg, from Family C. This leaves 13.2 Mg of credits. The manufacturer may wish to reserve those credits in case of production fluctuations or may enter directly into potential trading transactions.

Of course, these credits would not be realized until after the engines are actually produced. Any credits remaining at the end of the of the model year may be sold in last minute trading transactions or banked for future use.

E. Certification, Compliance, and Enforcement

This section provides a brief conceptual summary of how certification would work and how compliance determinations would be made under averaging, trading, and banking. Further details on the certification process would be provided in later guidance from EPA (*e.g.*, advisory circulars or certification format/application packets). Projected credits would be used in initial certification, but compliance with the emission standards would be based on actual credits achieved. Compliance would be evaluated two ways: (1) Compliance of the engine family with its FEL, and (2) Compliance of the engine family with the emission standard based on total emissions as calculated in these proposed programs. Enforcement actions based on a failure of the FEL would not be affected by trading and banking. They would essentially be the same as occurring now when a manufacturer's engine(s) fail to meet the emission standard. A discussion later in this section is specific to enforcement concerning the changes in certification due to banking and trading. EPA has written the regulatory language to include one of the proposed enforcement scenarios, but will modify this language according to whatever enforcement scheme EPA adopts. Also, if a manufacturer desires to use both credits and NCPs, it must separate their use into two families. The "credit-using" family must follow the guidelines proposed in this document, while the "NCP-using" family must follow provisions established by the current NCP program (as provided in 40 CFR Part 86, Subpart L).

As proposed, the banking and trading programs, like the averaging program, would be implemented and enforced through the certificate of conformance that a manufacturer must obtain for each of its engine families before the engines in that family can be sold (section 203(a)). The certificate would be conditioned on the manufacturer obtaining or generating the credits needed to bring the engine families within the averaging set into compliance with the standard. Compliance with the conditions of the certificate, and thus with the standard, would be determined

[15] *Transient Cycle Arrangement for Heavy-duty Engine and Chassis Emission Testing*, EPA Report HDV–78–04, August 1978. This document is available in Docket No. A–87–03.

based on end-of-year reports substantiating how many credits were actually generated or how many credits were needed and obtained to offset emissions above the level of the standard (as applicable). Failure to fulfill the conditions would result in the certificate being voided *ab initio* for the entire engine family covered by the certificate. As to be discussed later, credits and NCPs cannot be used by the same family, but must be separated into "credit using" and "NCP-using" families. End-of-year reports for each family must be submitted separately.

EPA has designed the proposed system so that the Agency could track the generation and use of credits as well as the use of NCPs to ensure that the engine families participating in the programs meet the applicable standard. Under the proposed system, manufacturers participating in any way in the averaging, trading, or banking programs would be required to submit initial reports as part of their certification applications for each engine family involved, the following information: (1) The emission limit (*i.e.*, the FEL) that the family is supposed to achieve; (2) the number of U.S. engines the manufacturer projects to produce in the relevant model year; (3) the number of credits the family would be expected to generate or need for the model year; and (4) how and where credits generated are to be dispersed or how and through what means the credit needs of the family are to be met. Information required in reporting NCP activity would follow the guidelines established for that program.

In addition, manufacturers participating in the trading program would be required (for each engine family) to report on a quarterly basis their quarterly and cumulative production for the year along with the credit transactions. These reports must be submitted to EPA (using the address provided below) no later than 30 days after the end of the calendar year quarters (*i.e.*, March 31, June 30, September 30, and December 31). Since certificates would be based on projected production, quarterly reporting would be a useful tool in tracking credit balances throughout the model year and thus would assist in monitoring compliance. This is deemed important for trading since the compliance status of two or more manufacturers may be affected. However, the Agency requests comment on this system's desirability.

In the case of trading, a manufacturer whose engine families require emission credits to comply with an applicable standard would have to identify the source of the needed credits and would have to include a copy of the contract of sale for the credits. If the manufacturer arranged to purchase the credits from a broker, the broker would have to separately provide EPA with the identity of the source of the credits it was arranging to sell and the contract of sale covering those credits. The purpose of these requirements is to allow EPA to identify the source of the credits so that the Agency may ensure that the credits are being generated by a family in the appropriate averaging set and be certain that the needed credits are generated.

For all three programs, manufacturers would be required to submit end-of-year reports within 30 days of the end of the model year. Quarterly and end-of year reports are to be sent to: Manufacturers Operations Division (EN–340F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20503.

As mentioned previously, engine families involved only in averaging and banking would need to submit only initial certification and end of year reports. Engine families involved in trading would have to submit initial certification, end-of year, and quarterly reports as well.

Figure 4 summarizes the type of information that would be required throughout the year for participation in these programs and presents a sample format for the information to be submitted by the manufacturers. This figure is largely self-explanatory and summarizes the information to be submitted and the determinations to be made by the manufacturers in the course of these programs. It should be noted that the quarterly reports are required only for those families involved in trading. A summary of the information required in Figure 4 is provided below.

Figure 4

Sample Format of Information Required for the HDE Averaging,Trading, and Banking Programs

Pollutant (NO_x or PM) _____
Manufacturer _____
FEL (g/BHP-hr) _____
Averaging Set _____
Engine Family _____
Useful Life (miles) _____
Emission Std. _____
Model Year _____
CF (BHP-hr/mi) _____
Is this family certified using the NCP provisions? _____

CREDIT TRACKING

(A) Reporting period	(B) U.S. prod. volume	(C) Credits (+/−)	(D) Averaging program amount where to/from	(E) Trading program amount where to/from	(F) Banking program amount (dpst/Wdrwn)	(G) Amount reserved	(H) NCPs in use
PROJECTED: Year							
ACTUAL: First Qrtr							
Second Qrtr Cumulative							
Third Qrtr Cumulative							
Fourth Qrtr Cumulative							
End-of-Year							

Quarterly and cumulative production (Column B), credit transactions (Columns C–G), and NCPs in use (Column H) are required when applicable. Column C represents the total credits transacted and should, if reported correctly, be the sum of Columns D, E, F, and G. Column G, labeled "Amount Reserved," represents those credits pending designation for averaging, trading, or banking or waiting verification for banking. Since these credits cannot be banked until verified at the end of the year, they are "floated" until the end-of-year report. Column H,

labeled "NCPs In Use" represents those NCPs used by an engine family during the model year. As previously explained, reporting of NCP use is to be separate from reporting of credit transactions. Finally, if manufacturers using a broker for credits are concerned about retaining anonymity, a coding system could be developed for use in column E.

As discussed further below, EPA also believes that effective enforcement of the programs would require that the source, as well as the user, of credits potentially be liable for noncompliance with standards that resulted from a shortfall in generated credits. As part of the end-of-year report of credit transactions, each participating manufacturer would report: (1) The number of engines it had produced within the families involved in the programs during the model year; (2) the parties and terms of any trades in which it was involved; and (3) the amount of any banked credits it expended. Based on this information, EPA would verify what credits each manufacturer had generated and, in light of any reported trades and withdrawals of banked credits, determine what, if any, credits each manufacturer could bank and whether any credit shortfalls had occurred. The Agency would attempt to make this determination within 60 days after receipt of the end-of-year reports.

Manufacturers wishing to bank credits could only do so after EPA had reviewed their end-of-year report. In the interim, credits designated for banking would be reserved, or "floated," (as previously mentioned) and could be redesignated for averaging or trading. Manufacturers could still certify engine families for the following model year using the credits declared for banking. Manufacturers could also arrange to trade their banked credits. However, if EPA found that the reported credits could not be verified, they would be revoked and deemed unavailable for use pending further resolution as discussed.

As is discussed in more detail in the next section (F), EPA is proposing two approaches to banking. Under one of these approaches credits could be generated and used three years before a new NO_x or PM emission standard is implemented, but could only be withdrawn (for 2 years) after the point when the new standard is effective. Due to enforcement liability concerns, in years when banking is not fully available, situations may arise when a manufacturer desires to have credits verified before entering into trading transactions. A likely scenario under this case would be the desire to generate credits in a given model year specifically for use in trading during the subsequent (next) model year. To allow manufacturers the flexibility to have credits verified before trading, if banking is not fully available (i.e., credit deposit and withdrawal permitted), EPA is proposing that reserved credits that are generated in one model year and specified for trading in the next model year need not be banked. In the end-of-model year report for each family, a manufacturer would have to designate the amount of credits to be traded in the subsequent model year and these would remain reserved for use in trading only in the next model year. If not used for trading they could ultimately be banked if credit banking is available. Otherwise, the credits would be lost after one model year.

Trade arrangements could be made openly between manufacturers or through an independent broker. EPA would act as a recordkeeper to verify credits and as an enforcer in case of illegal credit transactions (credit transactions across restricted boundaries, false credits, etc.). However, EPA does not plan to act as a credit broker. EPA may charge manufacturers an annual fee to help cover the administrative cost of the banking, trading, and averaging programs. This fee may be in addition to the fee presently being considered for traditional certification of a heavy-duty engine.

With regard to enforcement, credit shortfalls that occurred because the terms of a trade were not fulfilled would raise the issue of which manufacturer should be held liable. A shortfall involving a trade could occur in a number of ways: (1) One or both of the engine families failed to meet the applicable FEL in the production-line test; (2) an insufficient number of the engines generating the credits were produced or too many of the engines needing the credits were produced; (3) one or both manufacturers (or the broker) made an inadvertant mistake in calculating the credits it expected to generate or need; or (4) one manufacturer (or broker) fraudulently represents to the other that it will have credits to sell.

EPA believes that depending on the cause of the shortfall, one or the other or both parties to the trade should be held liable. Where the shortfall is the result of the credit-purchasing manufacturer failing its production-line test, producing more engines than it could cover with the credits it had arranged with the selling manufacturer (or broker) to purchase, or making an inadvertent calculation error, only the purchasing manufacturer should be held liable. In these situations, the buying manufacturer was in control of its compliance status, so it may be appropriately held responsible for the shortfall. Holding the selling manufacturer also responsible, on the other hand, would likely discourage it from agreeing to sell credits.

Where the shortfall is the result of the selling manufacturer failing to meet its production-line test, producing too few engines to generate the number of credits it had arranged to sell, or making an inadvertant calculation error, EPA believes that both the buying and selling manufacturers should be potentially liable. In these situations, the selling manufacturer was in control of whether the credits were generated and so may fairly be held liable.

However, EPA believes that buyers should also bear responsibility for a seller's failure to deliver, because the buyer could take steps to make such a failure less likely. First, buyers should arrange for trades only where they are confident that the seller would be able to deliver. Buyers could also write into the contract of sale terms that would provide greater assurance that the credits would indeed be generated. To give buyers the incentive to take these and other steps to ensure credits are generated, EPA proposes that the buyer be held liable for shortfalls that the seller created except where the seller defrauded the buyer.

In trades involving brokers, the Agency believes that selling manufacturers must still be liable where they have arranged with the broker to obtain a certain number of credits and then failed to do so. To preserve the confidentiality of production and other business information, manufacturers may prefer to buy and sell credits through brokers. However, to ensure the integrity of the trading program, EPA must be able to match up credit-generating and using engine families. For this reason, EPA proposes that, where manufacturers plan to buy credits from brokers, brokers be required to inform EPA of the source of the credits they have agreed to sell and document the agreement to sell. At the same time, the Agency believes that sellers should not be allowed to avoid their responsibility to generate the credits they have arranged to sell by trading through a broker. In addition, holding a broker solely liable for a selling manufacturer's failure to deliver may be insufficient to deter such action, since there is no assurance that brokers would have the financial resources to pay any

penalties assessed. In short, brokers are more likely to be judgment-proof than are manufacturers.

Where the shortfall is the result of fraud, only the defrauding party should be held liable, unless the defrauding party is a broker. For the reasons discussed above, EPA is concerned that the broker may not be effectively deterred by liability for fraudulent sales. Accordingly, where the fraud was committed by the broker, the Agency would hold liable that party—the buyer or seller of credits—that was in the best position to have avoided the fraudulent sale.

EPA believes that it can most effectively enforce against both credit-buying and -selling manufacturers by conditioning the certificates of conformity for the credit-generating and -using engines on the generation or purchase of credits, respectively, as arranged between the manufacturers. That is, certificates for engines needing credits would be conditioned on the generation of an adequate number of credits by a particular engine family, as agreed to by the manufacturer; certificates for engines generating credits would be conditioned on the generation of credits agreed to be sold.

The Agency acknowledges that manufacturers with credit-generating engines might not know at the time it certified those engines what it would do with those credits. In these cases, EPA would permit manufacturers to certify without designating the use of the credits (*i.e.*, reserved). However, when the manufacturer makes arrangements to sell the credits, it would be required to revise its certificate to include the condition that the engine family actually generate the credits agreed to in the trade.

More complicated liability issues would be posed where one credit-generating manufacturer sold to more than one manufacturer (or broker) but failed to generate enough credits to cover all its sales agreements. Buyers and sellers could agree among themselves to a particular way of distributing credits if a shortfall occurred. However, for those cases where buyers and sellers reached no such agreement or the agreements are conflicting, EPA proposes that the buyers' liability for a shortfall in credits be apportioned as follows. Whatever credits the seller in fact generates would be apportioned according to the dates of the contracts; that is, the credits would be used to fulfill the contracts in the order in which the contracts were signed. Where the contracts were signed on the same day or do not otherwise provide a means for prioritizing them, any credits would be distributed equally among the buyers.

EPA also considered holding just the credit-buying manufacturer liable if for any reason short of fraud insufficient credits were generated to bring its engine family into conformity with the standard. This approach would place the burden of securing the credits on the manufacturer whose engines emit above the level of the standard, which intuitively seems appropriate. In addition, the buying manufacturer could seek to redistribute liability to the seller in negotiating the terms of the contract of sale for the credits. However, EPA is concerned that it may be difficult to enforce against good faith buyers in every instance. (*See Farmers Union Central Exchange, Inc.* v. *Thomas*, CV87-176-DLG-JFB (D. Mont., 1987), in which a federal judge refused to hold a good faith purchaser of lead credits liable for a violation of EPA's lead banking regulations.) Since sellers have control over their performance of the contract terms, EPA also believes that they should share in the responsibility for ensuring compliance with emission standards. The Agency seeks comment on its suggested approach for apportioning liability in cases where traded credits fall short of what is needed to comply with emissions standards.

In any event, EPA proposes to allow manufacturers to make "last minute" transactions between the end of the model year and the submittal of their end-of-year report to obtain credits needed to show compliance with the standard. This approach would permit manufacturers to correct any negative credit balances identified after the model year has ended. However, NCPs could not be used, since production would have been terminated for that model year. The Agency seeks comment on this concept.

Another compliance issue is whether any exceedance of a standard as a result of insufficient credits should result in voiding the certificate of conformity for all of the engines in the relevant family or just for those whose production resulted in the standard being exceeded. EPA proposes that the certificate for all the engines in the family be voided *ab initio*. The trading and banking programs, along with the averaging program, would provide manufacturers with flexibility in meeting emission standards, but would also place a significant enforcement and compliance monitoring burden on EPA. As the foregoing discussion indicates, EPA would have to match and track engine families and their production from certification to year-end reports. The Agency also would have to conduct its testing program in a way that would ensure that engines being averaged together are all meeting their respective FELs. Given this added complexity, EPA believes manufacturers should have the maximum incentive to ensure compliance with emissions standards.

The integrity of the averaging, banking, and trading programs and the air quality impact of these programs are dependent on the manufacturers' submittal of accurate reports as discussed above. Subsequently, EPA is responsible for the effective auditing of the manufacturers' practices, liability determinations if violations are discovered, and enforcement of the resulting penalties.

Failure of a manufacturer to retain the required pertinent production information or to provide such information to EPA officials upon reasonable request may result in EPA voiding *ab initio* the certificates of conformity for those engines at issue. A violation of section 203(a)(1) of the Clean Air Act will have occurred for each engine distributed into commerce and for which the certificate of conformity has been voided. In these cases, the manufacturer would be subject to a section 205 penalty of up to $10,000 for each violation.

Pertinent information, whether kept by the manufacturer or by a contractor of the manufacturer, would be subject to auditing by EPA officials. Consequently, EPA officials would require voluntary entry and access to facilities and records pertaining to production as a condition of the certificate of conformity. Failure by a manufacturer or a contractor of the manufacturer, if applicable, to grant EPA officials entry and access to these facilities and records could result in EPA voiding *ab initio* the certificates of conformity for engines introduced into commerce. A violation of section 203(a)(1) will have occurred for each engine distributed into commerce and for which the certificate of conformity has been voided. Once again, the manufacturer will be subject to a section 205 penalty of up to $10,000 for each violation.

Certificates of conformity under the averaging program are conditional upon each engine family's end-of-model year net emissions (using averaged, traded, or banked credits) being at or below the applicable emission standard. The quarterly and end-of-model year reports that are required (as applicable) are critical for EPA to monitor conformance with the conditions under which the certificates of conformity are issued. Therefore, failure to submit the required

reports in the designated time will be considered a violation of section 203(a)(1) of the Clean Air Act. Every engine produced in each engine family which does not report for that model year will be considered a separate violation of section 203(a)(1) and will subject the manufacturer to the Section 205 penalty of up to $10,000 per violation.

This proposal also includes a provision for inspection and auditing of manufacturers' records by an independent auditor. EPA does not have enough information to assess the cost and benefits of an independent auditor and solicits comments on this issue.

Enforcement of the proposed program will include automatic retroactive adjustments to credits. If EPA or the manufacturer determines that a reporting error occurred, whether intentionally or unintentionally, that results in erroneous credits being reported as generated or otherwise available, those erroneous credits will automatically and retroactively be voided, regardless of the time lag between the report and the discovery of the error. The reporting manufacturer's end-of-year compliance will be recalculated for the model year at issue. If the resultant compliance level exceeds an applicable emission standard, then a determination of noncompliance and resulting enforcement action will occur.

F. Banking

The design of the banking program should be a function of environmental concerns, competitive concerns, and manufacturer need. As discussed previously in Section III, from an environmental perspective it is desirable that there be some degree of overlap in the operation and use of credit-generating and -using vehicles. In addition, some manufacturers suggested that maximum credit life be limited to prevent credit hoarding. To address these concerns, banked credits need to have a limited life and possibly should be depreciated with time. However, strict depreciation schedules and short credit life periods would reduce the economic incentive to create and bank credits. This would in turn reduce the incentive to develop cleaner engines earlier, resulting in the use of higher emitting engines for longer periods.

Finally, in terms of manufacturer need, banking may be most useful to help manufacturers smooth the transition to tighter standards. With banking, manufacturers could make reductions in emission levels before a new standard takes effect. These generated credits could then allow them to meet certification requirements as they continue to develop techniques to meet or surpass the new standard. During periods when the standard is not changing, the desire and need for banking would not be as great. However, there is some value to the increased flexibility in product planning and development which would come from a banking program which is available in every model year as would be the averaging and trading programs.

Several different program structure characteristics can be derived from consideration of these three design factors. First, should a banking program be of a more limited duration or should it be available in perpetuity as is the proposed trading program? Second, what should be the scheme for credit generation and credit use? And third, how long after credit generation should they be available and is depreciation needed?

After consideration of the design and structure concerns, EPA is proposing two different approaches to the banking program and EPA plan to implement one of the two approaches with perhaps some modifications based on the comments received.

In the first approach, EPA is proposing to allow banking only during the transition period to a tighter NO_x or PM standard. In general, EPA is proposing that banking of credits be permitted one to three model years prior to the model year in which a new, more stringent emission standard takes effect and that withdrawals be permitted during this three-year period plus an additional two-model-year period immediately after the new standard takes effect. These banked credits would maintain full value (no depreciation) over this five-year period but afterward could no longer be withdrawn and used. As discussed in Section E above, reserved credits designated for trading in the following model year would not be considered as part of banking.

For the 1991 emission standards, the above outline cannot be followed due to the limited time before the standards take effect. EPA is therefore proposing to allow banking of NO_x and PM credits during the 1990 model year. Credits generated in 1990 could be withdrawn for use by 1991 and 1992 model-year engines. In the case of the 1994 emission standards EPA is proposing that PM banking begin in 1991 and end after the 1995 model year. Credits generated from 1991 through 1993 model-year engines could be banked and withdrawn for use by 1991 through 1995 model-year engines. Similar provisions would apply to the 1994 NO_x standard once it is promulgated or to other future downward revisions to either the HDE NO_x or PM emission standards.

If in the future the period between more stringent emission standards is less than 3 years, any credits generated for banking under the first standard would be available for use in meeting subsequent standards, consistent with the credit life for the first standard.

As a second approach EPA is also proposing a program which would allow banking at any time, regardless of whether or not a tighter standard has been promulgated. In this program, credits generated in a given model year would have to be used within 5 years or completely lose their value. For example, PM credits deposited in the 1991 model year would have to be used by the close of the 1996 model year. Thus, this would be a continuous banking program where credits would have a maximum life of 5 years. A period of five years was selected because that was the longest credit life which would still provide some degree of in-use overlap (age/VMT) between credit-generating and credit-using vehicles. The question of depreciation of these credits is discussed below.

With regards to these two proposed approaches to banking EPA is seeking comment in three areas. These include the need for a rolling banking program versus a more limited program and the relative environmental and equity impacts, if any. Second, for both programs EPA is seeking comment on the number of years in which credits can be generated and used. Specifically, EPA is seeking comment on the credit life. Finally, related to credit life, EPA is seeking comment on whether credit depeciation is needed for programs where credit life exceeds 2 or 3 years. Depreciation for credit life beyond three years becomes an issue because at that point the VMT overlap between credit-generating and credit-using vehicles is less than 50 percent based on Mobile IV data (see Figure 6 discussed later). Thus, while EPA is not proposing depreciation for the more limited approach, EPA is interested in comments on whether some depreciation would be needed and desirable for banking programs with a longer credit life.

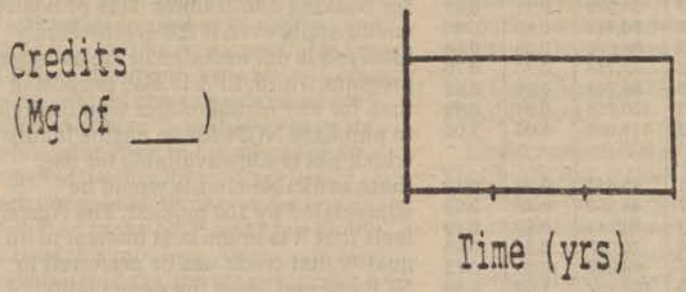
In addition, EPA is proposing for comment several possible depreciation strategies as part of this second approach. These proposed depreciation strategies are discussed below and are illustrated in Figure 5.

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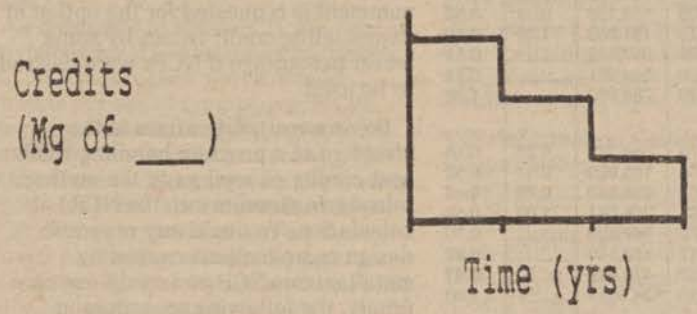
Figure 5

Time Value of Credits

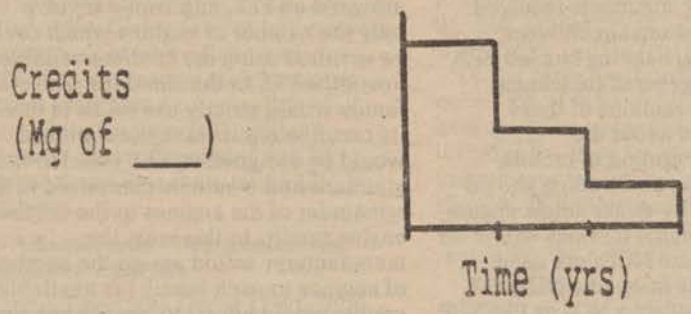
NO DEPRECIATION



FIXED DEPRECIATION



DEPRECIATION BY VMT



BILLING CODE 6560-50-C

1. No Depreciation

The first approach is to impose no depreciation schedules on credits. Banked credits would have full value until they are used or until they reach their maximum life. With no depreciation, the incentive to bank credits is maximized, but there is not necessarily a large degree of overlap in use between credit-generating and -using vehicles. In addition, this approach promotes banking over trading and may undermine the purpose of the trading program.

2. Fixed Depreciation

The second proposal is to depreciate credits at a fixed rate. This rate could represent a "straight-line" depreciation or could change according to a fixed schedule. This depreciation approach, by providing incentive to use credits rather than retain them. would promote the overlap of credit-generating and credit-using vehicles. EPA would consider a rate between 5 and 25 percent per annum or some schedule of annual values within that range, which would act to assure an acceptable degree of credit overlap between credit-generating and credit-using vehicles. As stated previously, a VMT overlap of about 50 percent is desirable and would be the goal under the fixed depreciation scheme.

3. Depreciation by VMT

As a variation of the fixed depreciation idea, credits could be depreciated according to the reduction in vehicle miles traveled (VMT) each year. This method ideally matches the availability of credits with the mileage accumulation of the credit-generating vehicle and is the preferable approach since emissions are linked to VMT. The VMT distributions which would be used by EPA are derived from the Mobile 4 emissions model, calculated to the average useful life as prescribed in 40 CFR 86.090–2. As is shown in Figure 6, banked credits could undergo large depreciations during the first years and smaller depreciations near the end of the credit life. Like Option 2, this approach would promote vehicle overlap and provide incentives to use credits rather than retain them.

EPA is interested in comments on all aspects of the depreciation concept and seeks view points on the need for depreciation and data to support possible depreciation schedules. Based on the record developed in the comments and further EPA analysis, EPA may adopt depreciation schedules similar in nature to those described in strategies 2 and 3 above if a rolling banking program is implemented.

FIGURE 6.—HDV VMT & CREDIT DEPRECIATION DATA [1]

Age	VMT	CUM MLG	DEPR (MI)	DEPR (YR)
HDGV				
1	18,211	18,211	0.16	0.16
2	16,767	34,978	0.31	0.31
3	15,437	50,415	0.45	0.45
4	14,213	64,628	0.58	0.58
5	13,086	77,714	0.70	0.70
6	12,048	89,762	0.81	0.81
7	11,093	100,855	0.91	0.91
8	10,213	111,068	1.00	1.00
LHDDV				
1	23,611	23,611	0.22	0.18
2	20,947	44,558	0.42	0.35
3	18,583	63,141	0.59	0.49
4	16,486	79,627	0.74	0.62
5	14,625	94,252	0.88	0.73
6	12,975	107,227	1.00	0.83
7	11,511	118,738	.....	0.92
8	10,212	128,950	.....	1.00
MHDDV				
1	43,946	43,946	0.23	0.16
2	40,504	84,450	0.45	0.31
3	37,332	121,782	0.65	0.45
4	34,408	156,190	0.83	0.58
5	31,713	187,903	1.00	0.70
6	29,229	217,132	.....	0 81
7	26,939	244,071	.....	0.91
8	24,829	268,900	.....	1.00
HHDDV				
1	86,375	86,375	0.28	0.16
2	79,434	165,809	0.54	0.32
3	73,051	238,860	0.78	0.46
4	67,181	306,041	1.00	0.58
5	61,782	367,823	.....	0.70
6	56,817	424,640	.....	0.81
7	52,252	476,892	.....	0.91
8	48,053	524,9945	.....	1.00

[1] Since the longest credit life proposed banking program is 5 years, data for later years is presented for completeness and to assist the public in preparation of comments on credit depreciation.

G. NCP Interactions

The analysis of comments received regarding the relationship between NCPs and trading/banking has led EPA to develop three general guidelines regarding the interactions of these programs. First, to avoid the inappropriate generation of credits, credits for banking and trading should not be generated by either single engine families or any engine families within an averaging set where NCPs are used. Second, due to the in-engine NO_x/PM trade-off, use of either a NO_x or PM NCP by an engine family precludes that family from generating either NO_x or PM credits. Third, for air quality considerations, use of credits is preferable to use of NCPs.

Based on these guidelines, EPA is proposing the following provisions applicable to NCPs, trading, and banking. First, for the 1990 model year, single engine families using either a NO_x or PM NCP may not generate either NO_x or PM credits for banking. This provision would apply to 1991 and later model years for banking and trading. Second, for 1991 and later model-year engine families, if a manufacturer has any engine family in a given averaging set which is using NO_x and/or PM NCPs, none of that manufacturer's engine families in that averaging set may generate either NO_x or PM credits for banking and trading. This provision would apply even if the engine family involved is not included in the averaging program. Third, EPA is also proposing that, for any manufacturer who desires to purchase NCPs for an engine family which has credits available for use, these available credits would be depreciated by 100 percent. The Agency feels that it is in the best interest of air quality that credit use be preferred to NCP use and, thus, the depreciation of credit value would provide an incentive for exhausting available credits before purchasing NCPs. The Agency seeks comment on this provision; but, also, since credits have a limited life, comment is requested for the option of depreciating credit values by some lesser percentage if NCPs were desired to be used.

Some uncertainty arises in the structure of a program handling NCPs and credits as well as in the methods of introducing credits into the NCP calculation. To avoid any program design complications caused by simultaneous NCP and credit use on a family, the following procedure in handling their treatment is proposed. An emission family needing NCPs and credits to meet the standard would be separated into two families. One family would strictly use credits, would be assigned an FEL, and would involve only the number of engines which could be certified using the credits available to lower the FEL to the standard. The other family would strictly use NCPs to lower its certification level to the standard, would be assigned an FEL equal to the standard and would be comprised of the remainder of the engines in the original engine family. In this way, the manufacturer would assign the number of engines to each family (as available credits would allow) to always ensure a lowering to the standard and, thus, to provide a means of quick remedy of any compliance problem (since future production could be shifted to the NCP problem). The use of such a procedure necessitates the manufacturer to submit a separate report for each family, one giving credit transactions and the other giving NCP use. Also, to implement this approach, the use of an NCP is proposed to be an engine family criteria.

This procedure may best be illustrated by showing an example of a possible situation which may arise. A manufacturer has 100 engines, each emitting 1,000 g of NO_x above the standard. Thus, a total of 100,000 g of NO_x are emitted above the standard. The manufacturer has available credits equalling to 75,000 g of NO_x and wishes to purchase an NCP for the remaining 25,000 g of NO_x. One engine family would be comprised of 75 engines and would be certified using credits to lower its FEL to the standard, while the other would contain 25 engines and would employ NCPs to "buy down" from its certification limit to the standard. If projected credits for the first family were not gained, future production could be shifted to the NCP-using family to address this problem. As part of the reporting process, the manufacturer would submit one report for each engine family—one reporting the use of the 75,000 g of NO_x credits (along with the other relevant data) and the other reporting the use of the 25,000 g of NO_x NCPs.

As discussed in Section III, the provisions for the interaction of credits and NCPs discussed above, would promote the use of credits over NCPs when possible, and would prevent manufacturers from circumventing the intent of the NCP program by generating credits for profit via the purchase of an NCP. EPA asks for comment on these provisions. Further details on the interaction between NCPs and the HDE banking, trading, and averaging programs will be worked out in the Phase III NCP rulemaking.

V. Statutory Authority

EPA has broad authority under sections 202, 206(a)(1), 207, 208, and 301(a) of the Clean Air Act to formulate and implement cost-saving and technology enhancing mobile source control programs. Promulgation of heavy-duty trading and banking programs to complement the HDE control program is thus within EPA's authority.

VI. Administrative Designation and Regulatory Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. Major regulations have an annual effect on the economy of $100 million or more or result in a major price increase. Today's banking and trading proposal is noteworthy in that it sets forth a new concept in emissions regulations for mobile sources. However, it is not "major" according to the established criteria. This proposal will actually help to reduce the cost of heavy-duty engines rather than increase their cost. Therefore, the Administrator has determined that this proposal does not constitute a major regulation.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any EPA response to those comments are in the public docket for this rulemaking.

VII. Compliance With Regulatory Flexibility Act

Under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq*, the Administrator is required to certify that this regulation will not have a significant economic impact on a substantial number of small business entities. None of the affected HDE manufacturing entities could be classified as a small business. Moreover, as already discussed, the banking and trading program can be expected to have salutary effects on manufacturers, both primary and secondary. Thus, I certify that this rule will not have a significant adverse economic impact on a substantial number of small entities.

VIII. Information Collection Requirements

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request document has been prepared by EPA (ICR No. 0783.08) and copy may be obtained from Bryan Wood-Thomas, Information Policy Branch; EPA; 401 M St., SW. (PM-223); Washington, DC 20460 or by calling (202) 475-8791.

Public reporting burden for this collection of information is estimated to average 13 hours per response. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 86

Administrative practice and procedures, Air pollution control, Gasoline, Motor vehicles, labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Date: May 8, 1989.

William K. Reilly,

Administrator.

PART 86—[AMENDED]

For the reasons set forth in the Preamble, Part 86 of Title 40 of the Code of Federal Regulations is proposed to be amended as follows.

1. The authority citation for Part 86 continues to read as follows:

Authority: Secs. 202, 203, 206, 207, 208, 215, 301a, Clean Air Act as Amended: 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550 and 7601(a).

Subpart A—[Amended]

2. The table of contents of Subpart A of Part 86 is republished for the convenience of the reader to read as follows.

Subpart A—General Provisions for Emission Regulations for 1977 and Later Model Year New Light-Duty Vehicles, Light-Duty Trucks, and Heavy-Duty Engines, and for 1985 and Later Model Year New Heavy-Duty Vehicles (Ordered by Initial Model Year).

Sec.
86.078-3 Abbreviations.
86.078-6 Hearings on certification.
86.078-7 Maintenance of records; submittal of information; right of entry.
86.079-31 Separate certification.
86.079-32 Addition of a vehicle or engine after certification.
86.079-33 Changes to a vehicle or engine covered by certification.
86.079-36 Submission of vehicle identification numbers.
86.079-39 Submission of maintenance instructions.
86.080-12 Alternative certification procedures.
86.081-8 Emissions standards for 1981 light-duty vehicles.
86.082-2 Definitions.
86.082-8 Emission standards for 1982 and later light-duty vehicles.
86.082-14 Small-volume manufacturer certification procedures.
86.082-34 Alternative procedure for notification of additions and changes.
86.083-30 Certification.
86.084-2 Definitions.
86.084-4 Section numbering; construction.
86.084-5 General standards; increase in emissions; unsafe conditions.
86.084-14 Small-volume manufacturers certification procedures.

Sec.
86.084–15 Emission standards for 1984 model year heavy passenger cars.
86.084–26 Mileage and service accumulation; emission measurements.
86.084–40 Automatic expiration of reporting and recordkeeping requirements.
86.085–1 General applicability.
86.085–2 Definitions.
86.085–8 Emission standards for 1985 and later model year light-duty vehicles.
86.085–9 Emission standards for 1985 and later model year light-duty trucks.
86.085–10 Emission standards for 1985 and later model year gasoline-fueled heavy-duty engines and vehicles.
86.085–11 Emission standards for 1985 and later model year diesel heavy-duty engines.
86.085–13 Alternative durability program.
86.085–15 through 19 [Reserved]
86.085–20 Incomplete vehicles, classification.
86.085–21 Application for certification.
86.085–22 Approval of application for certification; test fleet selections; determinations of parameters subject to adjustment for certification and Selective Enforcement Audit, adequacy of limits, and physically adjustable ranges.
86.085–23 Required data.
86.085–24 Test vehicles and engines.
86.085–25 Maintenance.
86.085–27 Special test procedures.
86.085–28 Compliance with emission standards.
86.085–29 Testing by the Administrator.
86.085–30 Certification.
86.085.35 Labeling.
86.085–37 Production vehicles and engines.
86.085–38 Maintenance instructions.
86.087–8 Emission standards for 1987 light-duty vehicles.
86.087–9 Emission standards for 1987 and later model year light-duty trucks.
86.087–10 Emission standards for 1987 and later model year gasoline-fueled heavy-duty engines and vehicles.
86.087–21 Application for certification.
86.087–23 Required data.
86.087–25 Maintenance.
86.087–28 Compliance with emission standards.
86.087–29 Testing by the Administrator.
86.087–30 Certification.
86.087–35 Labeling.
86.087–38 Maintenance instructions.
86.088–2 Definitions.
86.088–9 Emission standards for 1988 and later model year light-duty trucks.
86.088–10 Emission standards for 1988 and later model year gasoline-fueled heavy-duty engines and vehicles.
86.088–11 Emission standards for 1988 and later model year diesel heavy-duty engines.
86.088–21 Application for certification.
86.088–23 Required data.
86.088–25 Maintenance.
86.088–28 Compliance with emission standards.
86.088–29 Testing by the Administrator.
86.088–30 Certification.
86.088–35 Labeling.
86.090–1 General applicability.
86.090–2 Definitions.
86.090–3 Abbreviations.
86.090–5 General standards; increase in emissions; unsafe conditions.
86.090–7 Maintenance of records; submittal of information; right of entry.
86.090–8 Emission standards for 1990 and later model year light-duty vehicles.
86.090–9 Emission standards for 1990 and later model year light-duty trucks.
86.090–10 Emission standards for 1990 and later model year Otto-cycle heavy-duty engines and vehicles.
86.090–11 Emission standards for 1990 and later model year diesel heavy-duty engines and vehicles.
86.090–14 Small-volume manufacturer certification procedures.
86.090–15 NO_x and particulate banking for heavy-duty engines.
86.090–21 Application for certification.
86.090–22 Approval of application for certification; test fleet selections; determinations of parameters subject to adjustment for certification and selective enforcement audit, adequacy of limits, and physically adjustable ranges.
86.090–23 Required data.
86.090–24 Test vehicles and engines.
86.090–25 Maintenance.
86.090–26 Mileage and service accumulation; emission measurements.
86.090–27 Special test procedures.
86.090–28 Compliance with emission standards.
86.090–29 Testing by the Administrator.
86.090–30 Certification.
86.090–35 Labeling.
86.091–2 Definitions.
86.091–3 Abbreviations.
86.091–7 Maintenance of records; submittal of information; right of entry.
86.091–10 Emission standards for 1991 and later model year Otto-cycle heavy-duty engines and vehicles.
86.091–11 Emission standards for 1991 and later model year diesel heavy-duty engines and vehicles.
86.091–15 NO_x and particulate averaging, trading, and banking for heavy-duty engines.
86.091–21 Application for certification.
86.091–23 Required data.
86.091–28 Compliance with emission standards.
86.091–29 Testing by the Administrator.
86.091–30 Certification.
86.091–35 Labeling.
86.094–11 Emission standards for 1994 and later model year diesel heavy-duty engines and vehicles.

3. The table of contents of Subpart L of Part 86 is republished for the convenience of the reader to read as follows:

Subpart L—Nonconformance Penalties for Gasoline-Fueled and Diesel Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks

Sec.
86.1101–87 Applicability.
86.1102–87 Definitions.
86.1103–87 Criteria for availability of non conformance penalties.
86.1104–87 Determination of upper limits.
86.1104–90 Determination of upper limits.
86.1104–91 Determination of upper limits.
86.1105–87 Emission standards for which nonconformance penalties are available.
86.1106–87 Production compliance auditing.
86.1107–87 Testing by the Administrator.
86.1108–87 Maintenance of records.
86.1109–87 Entry and access.
86.1110–87 Sample selection.
86.1111–87 Test procedures for PCA testing.
86.1112–87 Determining the compliance level and reporting of test results.
86.1113–87 Calculation and payment of penalty.
86.1114–87 Suspension and voiding of certificates of conformity.
86.1115–87 Hearing procedures for nonconformance determinations and penalties.
86.1116–87 Treatment of confidential information.

4. Section 86.090–2 of Subpart A is proposed to be amended by revising the entire section to read as follows:

§ 86.090–2 Definitions.

The definitions in § 86.088–2 remain effective. The definitions in this section apply beginning with the 1990 model year.

"Averaging" for heavy-duty engines means the exchange of NO_x and particulate emission credits among engine families within a given manufacturers product line.

"Averaging set" means a subcategory of heavy-duty engines where engine families can average and trade emission credits with each other.

"Banking" means the retention of heavy-duty engine NO_x and particulate emission credits, by the manufacturer generating the emission credits, for use in future model year certification programs as permitted by regulation.

"Composite particulate standard," for a manufacturer which elects to average light-duty vehicles and light-duty trucks together in either the petroleum-fueled or methanol-fueled light-duty particulate averaging program, means thatstandard calculated using the following equation and roundedto the nearest one-hundredth (0.01) of a gram per mile:

$$\frac{(PROD_{LDV})(STD_{LDV})+(PROD_{LDT})(STD_{LDT})}{(PROD_{LDV})+(PROD_{LDT})} = \text{Manufacturer composite particulate standard}$$

Where:

$PROD_{LDV}$ represents the manufacturer's total petroleum-fueled diesel or methanol-fueled diesel light-duty vehicle production for those engine families being included in the appropriate average for a given model year.

STD_{LDV} represents the light-duty vehicle particulate standard.

$PROD_{LDT}$ represents the manufacturer's total petroleum-fueled diesel or methanol-fueled diesel light-duty truck production for those engine families being included in the appropriate average for a given model year.

STD_{LDT} represents the light-duty truck particulate standard.

"Diesel" means type of engine with operating characteristics significantly similar to the theoretical Diesel combustion cycle. The non-use of a throttle during normal operation is indicative of a diesel engine.

"Emission credits" mean the amount of emission reductions or exceedances, by a heavy-duty engine family, below or above the emission standard, respectively. Emission credits below the standard are considered as "positive credits," while emission credits above the standard are considered as "negative credits". In addition, "projected credits" refer to emission credits based on the projected U.S. production volume of the engine family: "Actual credits" refer to emission credits based on actual U.S. production volumes.

"Family emission limit" (FEL) means the emission level to which an engine family is certified in any of the averaging, trading, or banking programs. FELs must be expressed to the same number of decimal places as the applicable emission standard. The FEL for an engine family using NO_X or particulate NCPs must equal the value of the current NO_X or particulate emission standard.

"Flexible fuel vehicle (or engine)" means any motor vehicle (or motor vehicle engine) engineered and designed to be operated on a petroleum fuel, a methanol fuel, or any mixture of the two.

"Heavy heavy-duty engines" mean heavy-duty engines analogous to and including heavy heavy-duty diesel engines, regardless of the combustion cycle and fuel used. Heavy heavy-duty engines generally have a rated horsepower exceeding 250. Vehicles using engines from this group are normally tractors, trucks, and buses used in inter-city, long-haul applications. These vehicles normally exceed 33,000 pounds GVWR.

"Methanol-fueled" means any motor vehicle or motor vehicle engine that is engineered and designed to be operated using methanol fuel (*i.e.*, a fuel that contains at least 50 percent methanol (CH_3OH) by volume) as fuel. Flexible fuel vehicles are methanol-fueled vehicles.

"Non-oxygenated hydrocarbon" means organic emissions measured by a flame ionization detector, excluding methanol.

"Organic Material Hydrocarbon Equivalent" means the sum of the carbon mass contributions of non-oxygenated hydrocarbons, methanol and formaldehyde as contained in a gas sample, expressed as gasoline fueled vehicle hydrocarbons. In the case of exhaust emissions, the hydrogen-to-carbon ratio of the equivalent hydrocarbon is 1.85:1. In the case of diurnal and hot soak emissions, the hydrogen-to-carbon ratios of the equivalent hydrocarbons are 2.33:1 and 2.2:1, respectively.

"Otto-cycle" means type of engine with operating characteristics significantly similar to the theoretical Otto combustion cycle. The use of a throttle during normal operation is indicative of an Otto-cycle engine.

"Primary intended service class" means:

(a) The primary service application group for which a heavy-duty diesel engine is designed and marketed, as determined by the manufacturer. The primary intended service classes are designated as light, medium, and heavy heavy-duty diesel engines. The determination is based on factors such as vehicle GVW, vehicle usage and operating patterns, other vehicle design characteristics, engine horsepower, and other engine design and operating characteristics.

(1) Light heavy-duty diesel engines usually are non-sleeved and not designed for rebuild; their rated horsepower generally ranges from 70 to 170. Vehicle body types in this group might include any heavy-duty vehicle built for a light-duty truck chassis, van trucks, multi-stop vans, recreational vehicles, and some single axle straight trucks. Typical applications would include personal transportation, light-load commercial hauling and delivery, passenger service, agriculture, and construction. The GVWR of these vehicles is normally less than 19,500 lbs.

(2) Medium heavy-duty diesel engines may be sleeved or non-sleeved and may be designed for rebuild. Rated horsepower generally ranges from 170 to 250. Vehicle body types in this group would typically include school buses, tandem axle straight trucks, city tractors, and a variety of special purpose vehicles such as small dump trucks, and trash compactor trucks. Typical applications would include commercial short haul and intra-city delivery and pickup. Engines in this group are normally used in vehicles whose GVWR varies from 19,500–33,0000 lbs.

(3) Heavy heavy-duty diesel engines are sleeved and designed for multiple rebuilds. Their rated horsepower generally exceeds 250. Vehicles in this group are normally tractors, trucks, and buses used in inter-city, long-haul applications. These vehicles normally exceed 33,000 lbs GVWR.

"Production-weighted particulate average" means the manufacturer's production-weighted average particulate emission level, for certification purposes, of all of its diesel engine families included in the light-duty particulate averaging program. It is calculated at the end of the model year by multiplying each family particulate emission limit by its respective production, summing those terms, and dividing the sum by the total production of the effected families. Those vehicles produced for sale in California or at high altitude shall each be averaged separately from those produced for sale in any other area.

"Reserved credits" mean actual emission credits waiting to be verified for the banking program or used in the subsequent model year's trading program.

"Throttle" means a device used to control an engines power output by limiting the amount of air entering the combustion chamber.

"Trading" means the exchange of heavy-duty engine NOx or particulate emission credits between manufacturers.

"Useful life" means:

(a) For light-duty vehicles a period of use of 5 years or 50,000 miles, whichever first occurs.

(b) For a light-duty truck engine family, a period of use of 11 years or 120,000 miles, whichever occurs first.

(c) For an Otto-cycle heavy-duty engine family, a period of use of 8 years of 110,000 miles, whichever first occurs.

(d) For a diesel heavy-duty engine family:

(1) For light heavy-duty diesel engines, period of use of 8 years or 110,000 miles, whichever first occurs.

(2) For medium heavy duty diesel engines, a period of use of 8 years or 185,000 miles, whichever first occurs.

(3) For heavy heavy-duty diesel engines, a period of use of 8 years or 290,000 miles, whichever first occurs.

(e) As an option for both light duty truck and heavy-duty engine families, an alternative useful life period assigned by the Administrator under the provisions of paragraph (f) of § 86.090–21.

(f) The useful-life period for purposes of the emissions defect warranty and emissions performance warranty shall be a period of 5 years/50,000 miles whichever first occurs, for light-duty trucks, Otto-cycle heavy-duty engines and light heavy-duty diesel engines. For all other heavy-duty diesel engines the aforementioned period is 5 years/100,000 miles, whichever first occurs. However, in no case may this period be less than the manufacturer's basic mechanical warranty period for the engine family.

5. A new § 86.090–3 is proposed to be added to Subpart A to read as follows:

§ 86.090–3 Abbreviations.

(a) The abbreviations in § 86.078–3 remain effective. The abbreviations in this section apply beginning with the 1990 model year.

(b) The abbreviations in this section apply to this subpart, and also to Subparts B, E, F, M, N, and P of this part, and have the following meanings:

DNPH—2,4-dinitrophenylhydrazine.
FEL—Family emission limit.
GC—Gas chromatograph.
HPLC—High-pressure liquid chromatography.
MeOH—Methanol (CH_3OH).
Mg—Megagram(s) (1 million grams)
MJ—Megajoule(s) (1 million joules)
OMHCE—Organic Material Hydrocarbon Equivalent.
UV—Ultraviolet.

6. A new § 86.090–7 is proposed to be added to Subpart A to read as follows:

§ 86.090–7 Maintenance of records; submittal of information; right of entry.

(a) The manufacturer of any new motor vehicle (or new motor vehicle engine) subject to any of the standards or procedures prescribed in this subpart shall establish, maintain and retain the following adequately organized and indexed records.

(1) *General records.* (i) The records required to be maintained by this paragraph shall consist of:

(A) Identification and description of all certification vehicles (or certification engines) for which testing is required under this subpart.

(B) A description of all emission control systems which are installed on or incorporated in each certification vehicle (or certification engine).

(C) A description of all procedures used to test each such certification vehicle (or certification engine).

(ii) A properly filed application for certification, following the format prescribed by the US EPA for the appropriate model year, fulfills each of the requirements of this paragraph (a)(1).

(2) *Individual records.* (i) A brief history of each motor vehicle (or motor vehicle engine) used for certification under this subpart including:

(A) In the case where a current production engine is modified for use in a certification vehicle (or as a certification engine), a description of the process by which the engine was selected and of the modifications made In the case where the engine for a certification vehicle (or certification engine) is not derived from a current production engine, a general description of the buildup of the engine (*e.g.*, experimental heads were cast and machined according to supplied drawings, etc.). In both cases above, a description of the origin and selection process for carburetor, distributor, fuel system components, fuel injection components, emission control system components, smoke exhaust emission control system components, and exhaust aftertreatment devices as applicable, shall be included. The required descriptions shall specify the steps taken to assure that the certification vehicle (or certification engine) with respect to its engine, drivetrain, fuel system, emission control system components, exhaust aftertreatment devices, smoke exhaust emission control system components, vehicle weight or any other devices or components, as applicable, that can reasonably be expected to influence exhaust or evaporative emissions, as applicable, will be representative of production vehicles (or engines) and that either all components and/or vehicles (or engine) construction processed, component inspection and selection techniques, and assembly techniques employed in constructing such vehicles (or engines) are reasonably likely to be implemented for production vehicles (or engines) or that they are as closely analogous as practicable to planned construction and assembly processed.

(B) A complete record of all emission tests performed (except tests performed by EPA directly), including test results, the date and purpose of each test, and the number of miles accumulated on the vehicle (or the number of hours accumulated on the engine).

(C) The date of each mileage (or service) accumulation run, listing the mileage (or number of operating hours) accumulated.

(D) [Reserved]

(E) A record and description of all maintenance and other servicing performed, giving the date of the maintenance or service and the reason for it.

(F) A record and description of each test performed to diagnose engine or emission control system performance, giving the date and time of the test and the reason for it.

(G) (Reserved)

(H) A brief description of any significant events affecting the vehicle (or engine) during any time in the period covered by the history not described by an entry under one of the previous headings including such extraordinary events as vehicle accidents (or accidents involving the engine) or dynamometer runaway.

(ii) Each such history shall be started on the date that the first of any of the selection or buildup activities in paragraph (a)(2)(i)(A) of this section occurred with respect to the certification vehicle (or engine) changes or additional work is done on it, and shall be kept in a designated location.

(3) All records, other than routine emission test records, required to be maintained under this subpart shall be retained by the manufacturer for a period of six (6) years after issuance of all certificates of conformity to which they relate. Routine emission test records shall be retained by the manufacturer for a period of one (1) year after issuance of all certificates of conformity to which they relate. Records may be retained as hard copy or reduced to microfilm, punch cards, etc., depending on the record retention procedures of the manufacturer, *Provided*, that in every case all the information contained in the hard copy shall be retained.

(b) The manufacturer of any new motor vehicle (or new motor vehicle engine) subject to any of the standards prescribed in this subpart shall submit to the Administrator at the time of issuance by the manufacturer copies of all instructions or explanations

regarding the use, repair, adjustment, maintenance, or testing of such vehicle (or engine) relevant to the control of crankcase, exhaust or evaporative emissions, as applicable, issued by the manufacturer for use by other manufacturers, assembly plants, distributors, dealers, and ultimate purchasers; *Provided*, That any material not translated into the English language need not be submitted unless specifically requested by the Administrator.

(c)(1) The manufacturer (or contractor for the manufacturer, if applicable) of any new Otto-cycle or diesel vehicle (or engine) that is certified under any of the averaging or banking programs (as applicable) shall establish, maintain, and retain the following adequately organized and indexed records for each such vehicle (or engine):

(i) EPA engine family.

(ii) Vehicle (or engine) identification number.

(iii) Vehicle (or engine) model year and build date.

(iv) BHP rating (heavy-duty engines only).

(v) Purchaser and destination.

(vi) Assembly plant.

(2) The manufacturer (or contractor for the manufacturer, if applicable) of any new Otto-cycle or diesel vehicle (or engine) family that is certified under averaging or banking programs (as applicable) shall establish, maintain, and retain the following adequately organized and indexed records for each such family:

(i) EPA engine family.

(ii) FEL.

(iii) BHP conversion factor (heavy-duty engines only).

(iv) Useful life.

(v) Projected U.S. production volume for the model year.

(vi) Actual U.S. production volume for the model year.

(3) The manufacturer (or contractor for the manufacturer, if applicable) of any new Otto-cycle or diesel heavy-duty engine that is certified under the banking program shall establish, maintain, and retain adequately organized and indexed records of stock, orders and invoices of major engine components and emissions related parts used to manufacture those heavy-duty engines.

(4) The manufacturer (or contractor for the manufacturer, if applicable) shall retain all records required to be maintained under this section for a period of six years from the due date for the end-of-model year averaging/banking report. Records may be retained as hard copy or reduced to microfilm, ADP files, etc., depending on the manufacturer's record retention procedure: *Provided*, That in every case all the information contained in the hard copy is retained.

(5) Nothing in this section limits the Administrator's discretion in requiring the manufacturer to retain additional records or submit information not specifically required by this section.

(6) Pursuant to a request made by the Administrator, the manufacturer shall submit to him the information that is required to be retained.

(7) EPA may void *ab initio* a certificate of conformity for a vehicle (or engine) or engine family for which the manufacturer fails to retain the records required in this section or to provide such information to the Administrator upon request.

(8) Any engine family using NCPs must comply with the provisions established in the NCP program provided by 40 CFR Part 86, Subpart L.

(d)(1) Any manufacturer who has applied for certification of a new motor vehicle (or new motor vehicle engine) subject to certification test under this subpart shall admit or cause to be admitted any EPA Enforcement Officer or any EPA authorized representative during operating hours on presentation of credentials to any of the following:

(i) Any facility where any such tests or any procedures or activities connected with such test are or were performed.

(ii) Any facility where any new motor vehicle (or new motor vehicle engine) which is being, was, or is to be tested is present.

(iii) Any facility where any construction process or assembly process used in the modification or build up of such a vehicle (or engine) into a certification vehicle (or certification engine) is taking place or has taken place.

(iv) Any facility where any record or other document relating to any of the above is located.

(v) Any facility where any record or other document relating to the information specified in paragraph (c) is located.

(2) Upon admission to any facility referred to in paragraph (d)(1) of this section, any EPA Enforcement Officer or any EPA authorized representative shall be allowed:

(i) To inspect and monitor any part or aspect of such procedures, activities, and testing facilities, including, but not limited to, monitoring vehicle (or engine) preconditioning, emissions tests and mileage (or service) accumulation, maintenance, and vehicle soak and storage procedures (or engine storage procedures), and to verify correlation or calibration of test equipment;

(ii) To inspect and make copies of any such records, designs, or other documents, including those records specified in paragraph (c); and

(iii) To inspect and/or photograph any part or aspect of any such certification vehicle (or certification engine) and any components to be used in the construction thereof.

(3) In order to allow the Administrator to determine whether or not production motor vehicles (or production motor vehicle engines) conform to the conditions upon which a certificate of conformity has been issued, or conform in all material respects to the design specifications which applied to those vehicles (or engines) described in the application for certification for which a certificate of conformity has been issued to standards prescribed under section 202 of the Act, any manufacturer shall admit any EPA Enforcement Officer or any EPA authorized representative on presentation of credentials to both:

(i) Any facility where any document, design, or procedure relating to the translation of the design and construction of engines and emission related components described in the application for certification or used for certification testing into production vehicles (or production engines) is located or carried on; and

(ii) Any facility where any motor vehicles (or motor vehicle engines) to be introduced into commerce are manufactured or assembled.

(iii) Any facility where records specified in paragraph (c) are located.

(4) On admission to any such facility referred to in paragraph (d)(4) of this section, any EPA Enforcement Officer or any EPA authorized representative shall be allowed:

(i) To inspect and monitor any aspects of such manufacture or assembly and other procedures;

(ii) To inspect and make copies of any such records, documents or designs; and

(iii) To inspect and photograph any part or aspect of any such new motor vehicles (or new motor vehicle engines) and any component used in the assembly thereof that are reasonably related to the purpose of his entry.

(iv) To inspect and make copies of any records and documents specified in paragraph (c) of this section.

(5) Any EPA Enforcement Officer or EPA authorized representative shall be furnished by those in charge of a facility being inspected with such reasonable assistance as he may request to help him discharge any function listed in this paragraph. Each applicant for or

recipient of certification is required to cause those in charge of a facility operated for its benefit to furnish such reasonable assistance without charge to EPA whether or not the applicant controls the facility.

(6) The duty to admit or cause to be admitted any EPA Enforcement Officer or EPA authorized representative applies whether or not the applicant owns or controls the facility in question and applies both to domestic and to foreign manufacturers and facilities. EPA will not attempt to make any inspections which it has been informed that local law forbids. However, if local law makes it impossible to do what is necessary to insure the accuracy of data generated at a facility, no informed judgment that a vehicle or engine is certifiable or is covered by a certificate can properly be based on those data. It is the responsibility of the manufacturer to locate its testing and manufacturing facilities in jurisdictions where this situation will not arise.

(7) For purposes of this paragraph:

(i) "Presentation of credentials" shall mean display of the document designating a person as an EPA Enforcement Officer or EPA authorized representative.

(ii) Where vehicle, component, or engine storage areas or facilities are concerned, "operating hours" shall mean all times during which personnel other than custodial personnel are at work in the vicinity of the area or facility and have access to it.

(iii) Where facilities or areas other than those covered by paragraph (d)(7)(ii) of this section are concerned, "operating hours" shall mean all times during which an assembly line is in operation or all times during which testing, maintenance, mileage (or service) accumulation, production or compilation of records, or any other procedure or activity related to certification testing, to translation of designs from the test stage to the production stage, or to vehicle (or engine) manufacture or assembly is being carried out in a facility.

(iv) "Reasonable assistance" includes, but is not limited to, clerical, copying, interpretation and translation services, the making available on request of personnel of the facility being inspected during their working hours to inform the EPA Enforcement Officer or EPA authorized representative of how the facility operates and to answer his questions, and the performance on request of emissions tests on any vehicle (or engine) which is being, has been, or will be used for certification testing. Such tests shall be nondestructive, but may require appropriate mileage (or service) accumulation. A manufacturer may be compelled to cause the personal appearance of any employee at such a facility before an EPA Enforcement Officer or EPA authorized representative by written request for his appearance, signed by the Assistant Administrator for Air and Radiation, served on the manufacturer. Any such employee who has been instructed by the manufacturer to appear will be entitled to be accompanied, represented, and advised by counsel.

(v) Any entry without 24 hour prior written or oral notification to the affected manufacturer shall be authorized in writing by the Assistant Administrator for Air and Radiation.

(8) EPA may void *ab initio* a certificate of conformity for vehicles or engines or engine families introduced into commerce if the manufacturer (or contractor for the manufacturer, if applicable) fails to comply with any provision of this section.

(e) EPA Enforcement Officers or EPA authorized representatives are authorized to seek a warrant or court order authorizing the EPA Enforcement Officers or EPA authorized representatives to conduct activities related to entry and access as authorized in this section, as appropriate, to execute the functions specified in this section. EPA Enforcement Officers or EPA authorized representatives may proceed ex parte to obtain a warrant whether or not the Enforcement Officers first attempted to seek permission of the manufacturer or the party in charge of the facilities in question to conduct activities related to entry and access as authorized in this section.

(f) A manufacturer shall permit EPA Enforcement Officers or EPA authorized representatives who present a warrant or court order as described in paragraph (e) of this section to conduct activities related to entry and access as authorized in this section and as described in the warrant or court order. The manufacturer shall cause those in charge of its facility or facility operated for its benefit to permit EPA Enforcement Officers or EPA authorized representatives to conduct activities related to entry and access as authorized in this section pursuant to a warrant or court order whether or not the manufacturer controls the facility. In the absence of such a warrant or court order, EPA Enforcement Officers or EPA authorized representatives may conduct activities related to entry and access as authorized in this section only upon the consent of the manufacturer or the party in charge of the facilities in question.

(g) It is not a violation of this part or the Clean Air Act for any person to refuse to permit EPA Enforcement Officers or EPA authorized representatives to conduct activities related to entry and access as authorized in this section without a warrant or court order.

7. Section 86.090–10 of Subpart A is proposed to be amended by revising paragraphs (a)(1)(i)(C), (a)(1)(ii)(C), (a)(1)(iii)(C), and (a)(1)(iv)(C) to read as follows:

§ 86.090–10 Emission standards for 1990 and later model year Otto-cycle heavy-duty engines and vehicles.

(a) (1) * * *

(i) * * *

(C) *Oxides of nitrogen.* (*1*) 6.0 grams per brake horsepower-hour (2.2 grams per megajoule), as measured under transient operating conditions.

(*2*) A manufacturer may elect to include some or all of its gasoline-fueled Otto cycle heavy-duty engine families in the NO_x banking program for heavy-duty engines, within the restrictions described in § 86.090–15. If the manufacturer elects to include engine families in this program, the NO_x FELs may not exceed 6.0 grams per brake horsepower-hour (2.2 grams per megajoule).

(ii) * * *

(C) *Oxides of nitrogen.* (*1*) 6.0 grams per brake horsepower-hour (2.2 grams per megajoule), as measured under transient operating conditions.

(*2*) A manufacturer may elect to include some or all of its gasoline-fueled Otto-cycle heavy-duty engine families in the NO_x banking program for heavy-duty engines, within the restrictions described in § 86.090–15. If the manufacturer elects to include engine families in this program, the NO_x FELs may not exceed 6.0 grams per brake horsepower-hour (2.2 grams per megajoule).

(iii) * * *

(C) *Oxides of nitrogen.* (*1*) 6.0 grams per brake horsepower-hour (2.2 grams per megajoule), as measured under transient operating conditions.

(*2*) A manufacturer may elect to include some or all of its methanol-fueled Otto-cycle heavy-duty engine families in the NO_x banking program for heavy-duty engines, within the restrictions described in § 86.090–15. If the manufacturer elects to include engine families in this program, the NO_x FELs may not exceed 6.0 grams per brake horsepower-hour (2.2 grams per megajoule).

(iv) * * *

(C) *Oxides of nitrogen.* (*1*) 6.0 grams per brake horsepower-hour (2.2 grams per megajoule), as measured under transient operating conditions.

(2) A manufacturer may elect to include some or all of its methanol-fueled Otto-cycle heavy-duty engine families in the NO_x banking program for heavy-duty engines, within the restrictions described in § 86.090–15. If the manufacturer elects to include engine families in this program, the NO_x FELs may not exceed 6.0 grams per brake horsepower-hour (2.2 grams per megajoule).

* * * * *

8. Section 86.090–11 of Subpart A is proposed to be amended by revising paragraphs (a)(1)(iii) and (a)(1)(iv) to read as follows:

§ 86.090–11 Emission standards for 1990 and later model year diesel heavy-duty engines and vehicles.

(a) (1) * * *

(iii) *Oxides of nitrogen.* (A) 6.0 grams per brake horsepower-hour (2.2 grams per megajoule), as measured under transient operating conditions.

(B) A manufacturer may elect to include some or all of its diesel heavy-duty engine families in the NO_x banking program for heavy-duty engines, within the restrictions described in § 86.090–15. If the manufacturer elects to include engine families in this program, the NO_x FELs may not exceed 6.0 grams per brake horsepower-hour (2.2 grams per megajoule).

(iv) *Particulate emissions.* (A) 0.60 gram per brake horsepower-hour (0.22 gram per megajoule), as measured under transient operating conditions.

(B) A manufacturer may elect to include some or all of its diesel heavy-duty engine families in the particulate banking program for heavy-duty engines, within the restrictions described in § 86.090–15. If the manufacturer elects to include engine families in this program, the particulate FELs may not exceed 0.60 gram per brake horsepower-hour (0.22 gram per megajoule).

* * * * *

9. A new § 86.090–15 is proposed to be added to Subpart A to read as follows:

§ 86.090–15 NOx and particulate banking for heavy-duty engines.

(a)(1) This section applies only to 1990 model year heavy-duty engines. Credits generated for averaging, trading, or banking during the 1991 and following model years are discussed in § 86.091–15. Engines eligible for the NO_x and particulate banking programs are described in the applicable emission standards sections in this subpart. Participation in this program is voluntary.

(2) During the 1990 model year, manufacturers will only be allowed to bank NO_x and particulate emission credits generated by participating engine families. Credits may not be used for averaging or trading during the 1990 model year or to offset emissions that exceed an FEL. Credits may not be used to remedy an in-use nonconformity determined by a Selective Enforcement Audit or by in-use testing.

(3) Credits banked in 1990 may be used singly for a given engine family, in averaging, or in trading, or in any combination thereof, during the certification of engine families in the same averaging set and regional category as the generating engine family. Engines produced for sale in California constitute a separate regional category than engines produced for sale in the other 49 states. The averaging sets for heavy-duty engines are defined in § 86.091–15.

(4) NO_x or particulate emission credits generated for banking, from 1990 model year heavy-duty engines must be used in the certification of 1991 or 1992 model year heavy-duty engines within the constraints described in paragraph (a)(3) of this section or NO_x or particulate emission credits generated for banking from 1990 model year heavy-duty engines must be used in the certification of 1991, 1992, 1993, 1994, or 1995 heavy duty engines within the constraints described in paragraph (a)(3) of this section.

(b) Participation in the NO_x and/or particulate banking program shall be done as follows:

(1) During certification, the manufacturer shall:

(i) Declare its intent to include specific engine families in the NO_x and/or particulate banking programs.

(ii) Declare an FEL for each engine family participating in the banking program.

(A) The FEL must be to the same level of significant digits as the emissions standard (one-tenth of a gram per brake horsepower-hour for NO_x emissions and one-hundredth of a gram per horsepower-hour for particulate emissions.)

(B) In no case may the FEL exceed the applicable emission standard for 1990 model-year engines.

(iii) Calculate and report, as described in § 86.090 23, the projected emission credits, using the equation in paragraph (c) of this section and the applicable factors for the specific engine family.

(2) Upon certification, the manufacturer will be allowed to produce and sell engines in the certified engine family. Actual credits generated by the production of engines will be considered reserved during the model year.

(3) At the end of the model year, manufacturers shall submit to EPA the actual number of engines produced and the number of reserved credits, as described in § 86.090–23, in order to receive verification of the credits. Once credits are verified, they may be banked for future use as described in paragraph (a)(4) of this section.

(4) Within the restrictions of the applicable (NO_x or particulate) banking program:

(i) Manufacturers may indicate the intention to use reserved (unverified) credits during the certification of 1991 model year engines whose FELs exceed the emission standard.

(ii) Manufacturers may indicate the intention to use banked (verified) credits during the certification of future model year engines as described in paragraph (a)(3) of this section.

(iii) The actual number of banked credits used for future model year engine families will be dependent on the actual U.S. production volume of those engines. However, credits not used by the expiration period described in paragraph (a)(3) of this section shall be forfeited.

(5) If EPA or the manufacturer determines that a reporting error occurred on a report previously submitted to EPA under this section, the manufacturer's credits and credit calculations shall be recomputed. Erroneous positive credits will be void. Manufacturers shall be subject to the applicable penalties for engines exceeding the emission standard due to erroneous positive credits.

(c)(1) For each participating engine family, emission credits are to be calculated according to the following equation and rounded, in accordance with ASTM E29–67, to the nearest one-tenth of a Megagram (Mg). Consistent units are to be used throughout the equation.

$$\text{Emission credits} = (\text{Std} - \text{FEL}) \times (\text{CF}) \times (\text{UL}) \times (\text{Production}) \times (10^{-6})$$

Where:

Std = the current and applicable heavy-duty engine NO_x or particulate emission standard (as applicable) in grams per brake horsepower hour or grams per Megajoule.

FEL = the NO_x or particulate family emission limit (as applicable) for the engine family in grams per brake horsepower-hour or grams per Megajoule.

CF = a transient cycle conversion factor in BHP-hr/mi or MJ/mi, as given in paragraph (b)(2) of this section.

UL = the useful life, or alternative useful life as described in paragraph (f) of § 86.090–21, for the given engine family in miles.
Production = the number of engines produced for U.S. sales within the given engine family during the model year.

(2) The transient cycle conversion factor is the total cycle brake horsepower-hour or Megajoules, divided by the equivalent mileage of the applicable transient cycle. For Otto-cycle heavy-duty engines, the equivalent mileage is 6.3 miles. For diesel heavy-duty engines, the equivalent mileage is 6.5 miles. When more than one configuration is chosen by EPA to be tested in the certification of an engine family (as described in § 86.085–24), the conversion factor used is to be based upon the (projected and then actual) production-weighted average of the conversion factors of all configurations tested.

(d) Manufacturers may not generate either NO_x or particulate credits from any engine family using NO_x or particulate NCPs.

10. Section 86.090–21 of Subpart A is proposed to be amended by adding paragraph (b)(5)(iii) to read as follows:

§ 86.090–21 Application of certification.

* * * * *

(b) * * *

(5) * * *

(iii) If the manufacturer elects to participate in any of the particulate and/or the NO_x banking programs for heavy-duty engines, the application must list the information required in §§ 86.091–15 and 86.090–23.

* * * * *

11. Section 86.090–23 of Subpart A is proposed to be amended by adding paragraphs (h), (i) and (j), to read as follows:

§ 86.090–23 Required data.

* * * * *

(h) Additionally, manufacturers participating in any of the NO_x and/or particulate banking programs for heavy-duty engines shall submit:

(1) In the application for certification: The type (NO_x or particulate) and the projected number of credits generated for this family, the applicable averaging set, the projected U.S. production volumes, and the values required to calculate credits as given in § 86.090–15.

(2) End-of-year reports for each engine family participating in any of the banking programs.

(i) These end-of-year reports shall be submitted within 30 days of the end of the model year to: Director, Manufacturers Operations Division (EN–340F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

(ii) These reports shall indicate the engine family, the averaging set, the actual U.S. production volume, the values required to calculate credits as given in § 86.090–15, and the resulting type (NO_x or particulate) and number of credits generated for banking, and the NCPs in use.

(i) Failure by a manufacturer participating in the NO_x or particulate averaging programs to submit their end-of-year reports in the applicable specified time for all vehicles and engines that are part of an averaging set is a violation of section 203(a)(1) of the Clean Air Act for each such vehicle and engine.

(j) Failure by a manufacturer participating in either the HDE NO_x or particulate banking programs to submit their end-of-year reports in the applicable specified time (*i.e.*, 30 days) shall result in the credits not being available for use until such reports are received *and* verified. Use of projected credits pending verification will not be permitted in these circumstances.

12. Section 86.090–24 of Subpart A is proposed to be amended by adding paragraphs (a) (16) and (17).

§ 86.090–24 Test vehicles and engines.

* * * * *

(a) * * *

(16) If a manufacturer desires to use both banked credits and NCPs on an engine family, two separate engine families must be established. One engine family must consist of engines certified for only credit use following the procedure specified in this rulemaking. The other engine family must be certified for only NCP use following the procedure as specified in 40 CFR Part 86, Subpart L.

(17) Any 1990 or later model year urban bus engines which are to be used to generate PM credits for the 1991 and later model year urban bus PM standard shall be placed in separate engine families for certification purposes. Urban bus engines of different basic design will not be in the same family. If a manufacturer certifies two or more different urban bus engines these shall be in different engine families.

* * * * *

13. Section 86.090–30 of Subpart A is proposed to be amended by revising paragraphs (a)(1)(i), (a)(10), (a)(11), (b)(3), (c)(1)(iii), (c)(1)(iv) and (c)(4) to read as follows:

§ 86.090–30 Certification.

(a)(1)(i) If, after a review of the test reports and data submitted by the manufacturer, data derived from any inspection carried out under § 86.090–7(d), and any other pertinent data or information, the Administrator determines that a test vehicle(s) (or test engine(s)) meets(s) the requirements of the Act and of this subpart, he will issue a certificate of conformity with respect to such vehicles(s) (or engines(s)) except in cases covered by paragraphs (a)(1)(ii) and (c) of this section.

* * * * *

(10)(i) For diesel light duty vehicle and diesel light-duty truck families which are included in a particulate averaging program, the manufacturer's production-weighted average of the particulate emission limits of all engine families in a participating class or classes shall not exceed the applicable diesel particulate standard or the composite particulate standard defined in § 86.090–2 as appropriate, at the end of the model year, as determined in accordance with 40 CFR Part 86. The certificate shall be void *ab initio* for those vehicles causing the production-weighted FEL to exceed the particulate standard.

(ii) For all heavy-duty diesel engines which are included in the particulate banking program under § 86.090–15:

(A) All certificates issued are conditional upon the manufacturer complying with the provisions of § 86.090–15 and the banking related provision of other applicable sections, both during and after the model year production.

(B) Failure to comply with all provisions of § 86.090–15 may result in EPA not validating reserved credits.

(C) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied or excused.

(11)(i) For light-duty truck families which are included in a NO_x averaging program, the manufacturer's production-weighted average of the NO_x emission limits of all such engine families shall not exceed the applicable NO_x emission standard or the composite NO_x emission standard defined in § 86.088–2, as appropriate, at the end of the model year, as determined in accordance with 40 CFR Part 86. The certificate shall be void *ab initio* for those vehicles causing the production-weighted FEL to exceed the NO_x standard.

(ii) For all heavy-duty engines which are included in the NO_x banking program under § 86.090 15:

(A) All certificates issued are conditional upon the manufacturer complying with the provisions of § 86.090–15 and the banking related provision of other applicable sections,

both during and after the model year production.

(B) Failure to comply with all provisions of § 86.090–15 may result in EPA not validating reserved credits.

(C) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied or excused.

(b) * * *

(3) If after a review of the test reports and data submitted by the manufacturer, data derived from any additional testing conducted pursuant to § 86.090–29, data or information derived from any inspection carried out under § 86.090–7(d) or any other pertinent data or information, the Administrator determines that one or more test vehicles (or test engines) of the certification test fleet do not meet applicable standards (or family emission limits, as appropriate), he will notify the manufacturer in writing, setting forth the basis for his determination. Within 30 days following receipt of the notification, the manufacturer may request a hearing on the Administrator's determination. The request shall be in writing, signed by an authorized representative of the manufacturer and shall include a statement specifying the manufacturer's objections to the Administrator's determination and data in support of such objections. If, after a review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he shall provide the manufacturer a hearing in accordance with § 86.078–6 with respect to such issue.

* * * * *

(c) * * *

(1) * * *

(iii) Any EPA Enforcement Officer or authorized representative is denied access on the terms specified in § 86.090–7(d) to any facility or portion thereof which contains any of the following:

(iv) Any EPA Enforcement Officer or authorized representative is denied "reasonable assistance" (as defined in § 86.090–7(d) in examining any of the items listed in paragraph (c)(1)(iii) of this section.

* * * * *

(4) In any case in which certification of a vehicle (or engine) is proposed to be withheld, denied, revoked, or suspended under paragraph (c)(1)(iii) or (iv) of this section, and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.090–7(d) in fact occurred, the manufacturer, if he wishes to contend that, even though the violation occurred, the vehicle (or engine) in question was not involved in the violation to a degree that would warrant withholding, denial, revocation, or suspension of certification under either paragraph (c)(1)(iii) or (iv) of this section, shall have the burden of establishing that contention to the satisfaction of the Administrator.

* * * * * *

14. Section 86.090–35 of Subpart A is proposed to be amended by adding paragraphs (a)(3)(iii)(L) and (a)(3)(iii)(M) to read as follows:

§ 86.090–35 Labeling.

(a) * * *

(3) * * *

(iii) * * *

(L) For heavy-duty engines which are included in the particulate banking program, the particulate family emission limit to which the engine is certified.

(M) For heavy-duty engines which are included in the NO_x banking program, the NO_x family emission limit to which the engine is certified.

* * * * * *

15. Section 86.091–2 of Subpart A is proposed to be amended by revising the entire section to read as follows:

§ 86.091–2 Definitions.

The definitions of § 86.090–2 remain effective. The definitions listed in this section apply beginning with the 1991 model year.

"Reserved credits" mean actual emission credits waiting to be designated for use in averaging or trading, or waiting to be verified for the banking program.

"Urban bus" means a heavy-duty diesel-powered passenger-carrying vehicle with a load capacity of fifteen or more passengers and intended primarily for intra-city operation, *i.e.*, within the confines of a city or greater metropolitan area. Urban bus operation is characterized by short rides and frequent stops. To facilitate this type of operation, more than one set of quick-operating entrance and exit doors would normally be installed. Since fares are usually paid in cash or tokens rather than purchased in advance in the form of tickets, urban buses would normally have equipment installed for collection of fares. Urban buses are also typically characterized by the absence of equipment and facilities for long distance travel, *e.g.*, rest rooms, large luggage compartments, and facilities for stowing carry-on luggage. The useful life for urban buses is the same as the useful life for the applicable primary intended service class for heavy-duty diesel engines.

16. A new § 86.091–7 is proposed to be added to Subpart A to read as follows:

§ 86.091–7 Maintenance of records; submittal of information; right of entry.

(a) The manufacturer of any new motor vehicle (or new motor vehicle engine) subject to any of the standards or procedures prescribed in this subpart shall establish, maintain and retain the following adequately organized and indexed records.

(1) *General records.* (i) The records required to be maintained by this paragraph shall consist of:

(A) Identification and description of all certification vehicles (or certification engines) for which testing is required under this subpart.

(B) A description of all emission control systems which are installed on or incorporated in each certification vehicle (or certification engine).

(C) A description of all procedures used to test each such certification vehicle (or certification engine).

(ii) A properly filed application for certification, following the format prescribed by the US EPA for the appropriate model year, fulfills each of the requirements of this paragraph (a)(1) of this section.

(2) *Individual records.* (i) A brief history of each motor vehicle (or motor vehicle engine) used for certification under this subpart including:

(A) In the case where a current production engine is modified for use in a certification vehicle (or as a certification engine), a description of the process by which the engine was selected and of the modifications made. In the case where the engine for a certification vehicle (or certification engine) is not derived from a current production engine, a general description of the buildup of the engine (*e.g.*, experimental heads were cast and machined according to supplied drawings, etc.). In both cases above, a description of the origin and selection process for carburetor, distributor, fuel system components, fuel injection components, emission control system components, smoke exhaust emission control system components, and exhaust aftertreatment devices as applicable, shall be included. The required descriptions shall specify the steps taken to assure that the certification vehicle (or certification engine) with respect to its engine, drivetrain, fuel system, emission control system components, exhaust aftertreatment devices, smoke exhaust emission control system components, vehicle weight or any other devices or components, as applicable, that can reasonably be

expected to influence exhaust or evaporative emissions, as applicable, will be representative of production vehicles (or engines) and that either all components and/or vehicles (or engine) construction processed, component inspection and selection techniques, and assembly techniques employed in constructing such vehicles (or engines) are reasonably likely to be implemented for production vehicles (or engines) or that they are, as closely analogous as practicable to planned construction and assembly processed.

(B) A complete record of all emission tests performed (except tests performed by EPA directly), including test results, the date and purpose of each test, and the number of miles accumulated on the vehicle (or the number of hours accumulated on the engine).

(C) The date of each mileage (or service) accumulation run, listing the mileage (or number of operating hours) accumulated.

(D) [Reserved]

(E) A record and description of all maintenance and other servicing performed, giving the date of the maintenance or service and the reason for it.

(F) A record and description of each test performed to diagnose engine or emission control system performance, giving the date and time of the test and the reason for it.

(G) [Reserved]

(H) A brief description of any significant events affecting the vehicle (or engine) during any time in the period covered by the history not described by an entry under one of the previous headings including such extraordinary events as vehicle accidents (or accidents involving the engine) or dynamometer runaway.

(ii) Each such history shall be started on the date that the first of any of the selection or buildup activities in paragraph (a)(2)(i)(A) of this section occurred with respect to the certification vehicle (or engine) changes or additional work is done on it, and shall be kept in a designated location.

(3) All records, other than routine emission test records, required to be maintained under this subpart shall be retained by the manufacturer for a period of six (6) years after issuance of all certificates of conformity to which they relate. Routine emission test records shall be retained by the manufacturer for a period of one (1) year after issuance of all certificates of conformity to which they relate. Records may be retained as hard copy or reduced to microfilm, punch cards, etc., depending on the record retention procedures of the manufacturer, *Provided*, That in every case all the information contained in the hard copy shall be retained.

(b) The manufacturer of any new motor vehicle (or new motor vehicle engine) subject to any of the standards prescribed in this subpart shall submit to the Administrator at the time of issuance by the manufacturer copies of all instructions or explanations regarding the use, repair, adjustment, maintenance, or testing of such vehicle (or engine) relevant to the control of crankcase, exhaust or evaporative emissions, as applicable, issued by the manufacturer for use by other manufacturers, assembly plants, distributors, dealers, and ultimate purchasers, *Provided*, That any material not translated into the English language need not be submitted unless specifically requested by the Administrator.

(c)(1) The manufacturer (or contractor for the manufacturer, if applicable) of any new Otto-cycle or diesel vehicle (or engine) that is certified under averaging, trading, or banking programs (as applicable) shall establish, maintain, and retain the following adequately organized and indexed records for each such vehicle or heavy duty engine:

(i) EPA engine family.

(ii) Vehicle (or engine) identification number.

(iii) Vehicle (or engine) model year and build date.

(iv) BHP rating (heavy-duty engines only).

(v) Purchaser and destination.

(vi) Assembly plant.

(2) The manufacturer (or contractor for the manufacturer, if applicable) of any new Otto-cycle or diesel vehicle (or engine) family that is certified under averaging, trading, or banking programs (as applicable) shall establish, maintain, and retain the following adequately organized and indexed records for each such family:

(i) EPA engine family.

(ii) FEL.

(iii) BHP conversion factor (heavy-duty engines only).

(iv) Useful life.

(v) Projected U.S. production volume for the model year.

(vi) Actual U.S. production volume for the model year.

(3) The manufacturer (or contractor for the manufacturer, if applicable) of any new Otto-cycle or diesel heavy-duty engine that is certified under the averaging, trading, or banking programs (as applicable) shall establish, maintain, and retain adequately organized and indexed records of stock, orders and invoices of major engine components and emissions related parts used to manufacture those heavy-duty engines.

(4) The manufacturer (or contractor for the manufacturer, if applicable) shall retain all records required to be maintained under this section for a period of six years from the due date for the end-of-model year averaging, trading, and banking reports. Records may be retained as hard copy or reduced to microfilm, ADP files, etc., depending on the manufacturer's record retention procedure; *Provided*, That in every case all the information contained in the hard copy is retained.

(5) Nothing in this section limits the Administrator's discretion in requiring the manufacturer to retain additional records or submit information not specifically required by this section.

(6) Pursuant to a request made by the Administrator, the manufacturer shall submit to him the information that is required to be retained.

(7) EPA may void *ab initio* a certificate of conformity for a vehicle or engine or engine family for which the manufacturer fails to retain the records required in this section or to provide such information to the Administrator upon request.

(8) Any engine family using NCPs must comply with the provisions established in the NCP program provided by 40 CFR Part 86, Subpart L.

(d)(1) Any manufacturer who has applied for certification of a new motor vehicle (or new motor vehicle engine) subject to certification test under this subpart shall admit or cause to be admitted any EPA Enforcement Officer or any EPA authorized representative during operating hours on presentation of credentials to any of the following:

(i) Any facility where any such tests or any procedures or activities connected with such test are or were performed.

(ii) Any facility where any new motor vehicle (or new motor vehicle engine) which is being, was, or is to be tested is present.

(iii) Any facility where any construction process or assembly process used in the modification or build up of such a vehicle (or engine) into a certification vehicle (or certification engine) is taking place or has taken place.

(iv) Any facility where any record or other document relating to any of the above is located.

(v) Any facility where any record or other document relating to the information specified in paragraph (c) of this section is located.

(2) Upon admission to any facility referred to in paragraph (d)(1) of this

section, any EPA Enforcement Officer or any EPA authorized representative shall be allowed:

(i) To inspect and monitor any part or aspect of such procedures, activities, and testing facilities, including, but not limited to, monitoring vehicle (or engine) preconditioning, emissions tests and mileage (or service) accumulation, maintenance, and vehicle soak and storage procedures (or engine storage procedures), and to verify correlation or calibration of test equipment;

(ii) To inspect and make copies of any such records, designs, or other documents, including those records specified in paragraph (c) of this section; and

(iii) To inspect and/or photograph any part or aspect of any such certification vehicle (or certification engine) and any components to be used in the construction thereof.

(3) In order to allow the Administrator to determine whether or not production motor vehicles (or production motor vehicle engines) conform to the conditions upon which a certificate of conformity has been issued, or conform in all material respects to the design specifications which applied to those vehicles (or engines) described in the application for certification for which a certificate of conformity has been issued to standards prescribed under section 202 of the Act, any manufacturer shall admit any EPA Enforcement Officer or any EPA authorized representative on presentation of credentials to both:

(i) Any facility where any document, design, or procedure relating to the translation of the design and construction of engines and emission related components described in the application for certification or used for certification testing into production vehicles (or production engines) is located or carried on; and

(ii) Any facility where any motor vehicles (or motor vehicle engines) to be introduced into commerce are manufactured or assembled.

(iii) Any facility where records specified in paragraph (c) of this section are located.

(4) On admission to any such facility referred to in paragraph (d)(4) of this section, any EPA Enforcement Officer or any EPA authorized representative shall be allowed:

(i) To inspect and monitor any aspects of such manufacture or assembly and other procedures;

(ii) To inspect and make copies of any such records, documents or designs; and

(iii) To inspect and photograph any part or aspect of any such new motor vehicles (or new motor vehicle engines) any component used in the assembly thereof that are reasonably related to the purpose of his entry.

(iv) To inspect and make copies of any records and documents specified in paragraph (c) of this section.

(5) Any EPA Enforcement Officer or EPA authorized representative shall be furnished by those in charge of a facility being inspected with such reasonable assistance as he may request to help him discharge any function listed in this paragraph. Each applicant for or recipient of certification is required to cause those in charge of a facility operated for its benefit to furnish such reasonable assistance without charge to EPA whether or not the applicant controls the facility.

(6) The duty to admit or cause to be admitted any EPA Enforcement Officer or EPA authorized representative applies whether or not the applicant owns or controls the facility in question and applies both to domestic and to foreign manufacturers and facilities. EPA will not attempt to make any inspections which it has been informed that local law forbids. However, if local law makes it impossible to do what is necessary to insure the accuracy of data generated at a facility, no informed judgment that a vehicle or engine is certifiable or is covered by a certificate can properly be based on those data. It is the responsbility of the manufacturer to locate its testing and manufacturing facilities in jurisdictions where this situation will not arise.

(7) For purposes of this paragraph:

(i) "Presentation of credentials" shall mean display of the document designating a person as an EPA Enforcement Officer or EPA authorized representative.

(ii) Where vehicle, component, or engine storage areas or facilities are concerned, "operating hours" shall mean all times during which personnel other than custodial personnel are at work in the vicinity of the area or facility and have access to it.

(iii) Where facilities or areas other than those covered by paragraph (d)(7)(ii) of this section are concerned, "operating hours" shall mean all times during which an assembly line is in operation or all times during which testing, maintenance, mileage (or service) accumulation, production or compilation of records, or any other procedure or activity related to certification testing, to translation of designs from the test stage to the production stage, or to vehicle (or engine) manufacture or assembly is being carried out in a facility.

(iv) "Reasonable assistance" includes, but is not limited to, clerical, copying, interpretation and translation services, the making available on request of personnel of the facility being inspected during their working hours to inform the EPA Enforcement Officer or EPA authorized representative of how the facility operates and to answer his questions, and the performance on request of emissions tests on any vehicle (or engine) which is being, has been, or will be used for certification testing. Such tests shall be nondestructive, but may require appropriate mileage (or service) accumulation. A manufacturer may be compelled to cause the personal appearance of any employee at such a facility before an EPA Enforcement Officer or EPA authorized representative by written request for his appearance, signed by the Assistant Administrator for Air and Radiation, served on the manufacturer. Any such employee who has been instructed by the manufacturer to appear will be entitled to be accompanied, represented, and advised by counsel.

(v) Any entry without 24 hour prior written or oral notification to the affected manufacturer shall be authorized in writing by the Assistant Administrator for Air and Radiation.

(8) EPA may void *ab initio* a certificate of conformity for vehicles or engines or engine families introduced into commerce if the manufacturer (or contractor for the manufacturer, if applicable) fails to comply with any provision of this section.

(e) EPA Enforcement Officers or EPA authorized representatives are authorized to seek a warrant or court order authorizing the EPA Enforcement Officers or EPA authorized representatives to conduct activities related to entry and access as authorized in this section, as appropriate, to execute the functions specified in this section. EPA Enforcement Officers or EPA authorized representatives may proceed ex parte to obtain a warrant whether or not the Enforcement Officers first attempted to seek permission of the manufacturer or the party in charge of the facilities in question to conduct activities related to entry and access as authorized in this section.

(f) A manufacturer shall permit EPA Enforcement Officers or EPA authorized representatives who present a warrant or court order as described in paragraph (e) of this section to conduct activities related to entry and access as authorized in this section and as described in the warrant or court order. The manufacturer shall cause those in charge of its facility or facility operated for its benefit to permit EPA

Enforcement Officers or EPA authorized representatives to conduct activities related to entry and access as authorized in this section pursuant to a warrant or court order whether or not the manufacturer controls the facility. In the absence of such a warrant or court order, EPA Enforcement Officers or EPA authorized representatives may conduct activities related to entry and access as authorized in this section only upon the consent of the manufacturer or the party in charge of the facilities in question.

(g) It is not a violation of this part or the Clean Air Act for any person to refuse to permit EPA Enforcement Officers or EPA authorized representatives to conduct activities related to entry and access as authorized in this section without a warrant or court order.

17. Section 86.091–10 of Subpart A is proposed to be amended by revising paragraphs (a)(1)(i)(C)(*2*), (a)(1)(ii)(C)(*2*), (a)(1)(iii)(C)(*2*), and (a)(1)(iv)(C)(*2*) to read as follows:

§ 86.091–10 Emission standards for 1991 and later model year. Otto-cycle heavy-duty engines and vehicles.

(a)(1) * * *

(i) * * *

(C) * * *

(*2*) A manufacturer may elect to include some or all of its gasoline-fueled Otto-cycle heavy-duty engine families in some or all of the NO_x averaging, trading, or banking programs for heavy-duty engines, within the restrictions described in § 86.091–15. If the manufacturer elects to include engine families in any of these programs, the NO_x FELs may not exceed 6.0 grams per brake horsepower-hour (2.2 grams per megajoule). This ceiling value applies whether credits are used in an averaging program or applied singly to a given engine family.

(ii) * * *

(C) * * *

(*2*) A manufacturer may elect to include some or all of its gasoline-fueled Otto-cycle heavy-duty engine families in some or all of the NO_x averaging, trading, or banking programs for heavy-duty engines, within the restrictions described in § 86.091–15. If the manufacturer elects to include engine families in any of these programs, the NO_x FELs may not exceed 6.0 grams per brake horsepower-hour (2.2 grams per megajoule). This ceiling value applies whether credits are used in an averaging program or applied singly to a given family.

(iii) * * *

(C) * * *

(*2*) A manufacturer may elect to include some or all of its methanol-fueled Otto-cycle heavy-duty engine families in some or all of the NO_x averaging, trading, or banking programs for heavy-duty engines, within the restrictions described in § 86.091–15. If the manufacturer elects to include engine families in any of these programs, the NO_x FELs may not exceed 6.0 grams per brake horsepower-hour (2.2 grams per megajoule). This ceiling value applies whether credits are used in an averaging program or applied singly to a given engine family.

(iv) * * *

(C) * * *

(*2*) A manufacturer may elect to include some or all of its methanol-fueled Otto-cycle heavy-duty engine families in some or all of the NO_x averaging, trading, or banking programs for heavy-duty engines, within the restrictions described in § 86.091–15. If the manufacturer elects to include engine families in any of these programs, the NO_x FELs may not exceed 6.0 grams per brake horsepower-hour (2.2 grams per megajoule). This ceiling value applies whether credits are used in an averaging program or applied singly to a given engine family.

* * * * *

18. Section 86.091–11 of Subpart A is proposed to be amended by revising paragraphs (a)(1)(iii)(B) and (a)(1)(iv)(C) to read as follows:

§ 86.091–11 Emission standards for 1991 and later model year diesel heavy-duty engines and vehicles.

(a)(1) * * *

(iii) * * *

(B) A manufacturer may elect to include some or all of its diesel heavy-duty engine families in some or all of the NO_x averaging, trading, or banking programs for heavy-duty engines, within the restrictions described in § 86.091–15. If the manufacturer elects to include engine families in any of these programs, the NO_x FELs may not exceed 6.0 grams per brake horsepower-hour (2.2 grams per megajoule). This ceiling value applies whether credits are used in an averaging program or applied singly to a given engine family.

(iv) * * *

(C) A manufacturer may elect to include some or all of its diesel heavy-duty engine families in some or all of the particulate averaging, trading, or banking programs for heavy-duty engines, within the restrictions described in § 86.091–15. If the manufacturer elects to include engine families in any of these programs, the particulate FELs may not exceed:

(*1*) For engine families intended for use in urban buses, 0.25 gram per brake horsepower-hour (0.093 gram per megajoule).

(*2*) For engine families not intended for use in urban buses, 0.60 gram per brake horsepower-hour (0.22 gram per megajoule).

(*3*) These ceiling values apply whether credits are used in an averaging program or applied singly to a given engine family.

* * * * *

19. A new § 86.091–15 is proposed to be added to Subpart A to read as follows:

§ 86.091–15 NO_x and particulate averaging, trading, and banking for heavy-duty engines.

(a)(1) Heavy-duty engines eligible for the NO_x and particulate averaging, trading, and banking programs are described in the applicable emission standards sections in this subpart. Participation in these programs is voluntary.

(2)(i) Engine families with FELs exceeding the applicable standard shall obtain emission credits in a mass amount sufficient to address the shortfall. Credits may be obtained from averaging, trading, or banking, within the restrictions described in this section.

(ii) Engine families with FELs below the applicable standard will have emission credits available to average, trade, or bank (or a combination thereof). Credits may not be used for averaging or trading to offset emissions that exceed an FEL. Credits may not be used to remedy an in-use nonconformity determined by a Selective Enforcement Audit or by in-use testing.

(b) Participation in the NO_x and/or particulate averaging, trading, and banking programs shall be done as follows.

(1) During certification, the manufacturer shall:

(i) Declare its intent to include specific engine families in the averaging, trading and/or banking programs. Separate declarations are required for each program and for each pollutant (*i.e.*, NO_x and particulate).

(ii) Declare an FEL for each engine family participating in one or more of these three programs.

(A) The FEL must be to the same level of significant digits as the emission standard (one-tenth of a gram per brake horsepower for NO_x emissions and one-hundredth of a gram per brake horsepower-hour for particulate emissions).

(B) In no case may the FEL exceed the upper limit prescribed in the section concerning the applicable heavy-duty

engine NO_x and particulate emission standards.

(iii) Calculate the projected emission credits (+/−) for each participating family and for each pollutant (NO_x and particulate), using the equation in paragraph (c) of this section and the applicable factors for the specific engine family.

(iv)(A) Determine and state the source of the needed credits for engine families requiring credits for certification.

(B) State where the projected credits will be applied for engine families generating credits.

(C) Credits may be obtained from or applied to only engine families within the same averaging set as described in paragraphs (d) and (e) of this section. Credits are available for averaging, trading, or banking as defined in § 86.090–2, may be applied singly to a given engine family, or reserved as defined in § 86.091–2.

(2) Based on this information each manufacturer's certification application must demonstrate:

(i) That each engine family has net mass emissions of zero using the methodology in paragraph (c) of this section with any credits obtained from averaging, trading or banking.

(ii) The source of the credits to be used to comply with the emission standard if the FEL exceeds the standard, or where credits will be applied if the FEL is less than the standard. In cases where credits are being obtained, each engine family involved must state specifically the source (manufacturer/engine family) of the credits being used. In cases where credits are being generated/supplied, each engine family involved must state specifically the designated use (manufacturer/engine family) of the credits involved. All such reports shall include all credits involved in averaging, trading or banking.

(3) During the model year manufacturers must:

(i) Monitor projected versus actual production to be certain that compliance with the emission standards is achieved at the end of the model year.

(ii) Provide the quarterly and end-of-model year reports required under § 86.091–23.

(4) Projected credits based on information supplied in the certification application may be used to obtain a certificate of conformity. However, any such credits must be verified based on review of end-of-model year reports, any audits it conducts, and any other verification steps deemed appropriate by the Administrator.

(5) Compliance under averaging, banking, and trading will be determined at the end of the model year. Engine families without an adequate amount of verified NO_x and/or particulate emission credits will violate the conditions of the certificate of conformity. The certificates of conformity may be voided *ab initio* for each engine in those families, regardless of the source cited for the credits.

(6) If EPA or the manufacturer determines that a reporting error occurred on a report previously submitted to EPA under this section, the manufacturer's credits and credit calculations shall be recalculated. Erroneous positive credits will be void. Erroneous negative credits may be verified by EPA for retroactive use. The end-of-year credit balance will be recalculated for the applicable model year.

(c)(1) For each participating engine family, NO_x and particulate emission credits (positive or negative) are to be calculated according to the following equation and rounded, in accordance with ASTM E29–67, to the nearest one-tenth of a Megagram (Mg). Consistent units are to be used throughout the equation.

$$\text{Emission credits} = (\text{Std} - \text{FEL}) \times (\text{CF}) \times (\text{UL}) \times (\text{Production}) \times (10^{-6})$$

Where:

Std = the current and applicable heavy-duty engine NO_x or particulate emission standard in grams per brake horsepower hour or grams per Megajoule.

FEL = the NO_x or particulate family emission limit for the engine family in grams per brake horsepower-hour or grams per Megajoule.

CF = a transient cycle conversion factor in BHP-hr/mi or MJ/mi, as given in paragraph (c)(2) of this section.

UL = the useful life, or alternative life as described in paragraph (f) of § 86.090–21, for the given engine family in miles.

Production = the number of engines produced for U.S. sales within the given engine family during the model year. Production projections are used for initial certification. Actual production is used for end-of-year verification and compliance determination.

(2) The transient cycle conversion factor is the total cycle brake horsepower-hour or Megajoules, divided by the equivalent mileage of the applicable transient cycle. For Otto-cycle heavy-duty engines, the equivalent mileage is 6.3 miles. For diesel heavy-duty engines, the equivalent mileage is 6.5 miles. When more than one configuration is chosen by EPA to be tested in the certification of an engine family (as described in § 86.085–24), the conversion factor used is to be based upon the production-weighted average of the conversion factors of all configurations tested.

(d) *Averaging sets for NO_x emission credits.* The averaging and trading of NO_x emission credits will only be allowed between heavy-duty engine families in the same averaging set and in the same regional category. Engines produced for sale in California constitute a separate regional category than engines produced for sale in the other 49 states. The averaging sets for the averaging and trading of NO_x emission credits for heavy-duty engines are defined as follows:

(1) For *Otto-cycle* heavy-duty engines. (i) Otto-cycle heavy-duty engines constitute an averaging set. Averaging and trading between gasoline-fueled and methanol-fueled, Otto-cycle heavy-duty engine families is allowed.

(ii) Heavy heavy-duty engines constitute an averaging set. Otto-cycle heavy heavy-duty engine families may therefore average and trade credits with other Otto-cycle heavy-duty engine families *or* with diesel heavy heavy-duty engine families. However, any given Otto-cycle heavy heavy-duty engine family *may not* average and/or trade with *both* Otto-cycle non-heavy heavy-duty engine families *and* with diesel heavy heavy-duty engine families.

(iii) Manufacturers of Otto-cycle heavy heavy-duty engines must indicate upon certification which averaging set (Otto-cycle or diesel heavy heavy-duty) these engine families will participate in. An Otto-cycle heavy heavy-duty engine family may *not* average and/or trade credits within *both* averaging sets.

(2) For *diesel* heavy-duty engines. (i) Each of the three primary intended service classes for heavy-duty diesel engines, as defined in § 86.090–2, constitute an averaging set. Averaging and trading between petroleum-fueled and methanol-fueled, diesel engine families within the same primary service class is allowed.

(ii) Heavy heavy-duty engines constitute an averaging set. Averaging and trading NO_x emission credits between any heavy heavy-duty engine family (Otto-cycle or diesel) is allowed except as provided for in paragraph (c)(1)(ii) of this section.

(e) *Averaging sets for particulate emission credits.* The averaging and trading of particulate emission credits will only be allowed between heavy-duty engine families in the same averaging set and in the same regional category. Engines produced for sale in California constitute a separate regional category than engines produced for sale in the other 49 states. The averaging sets for the averaging and trading of particulate emission credits for heavy-duty engines are defined as follows:

(1) Engines intended for use in *urban buses* constitute a separate averaging set from all other heavy-duty engines. Averaging and trading between petroleum-fueled and methanol-fueled diesel bus engine families is allowed.

(2) For heavy-duty engines, exclusive of urban bus engines, each of the three primary intended service classes for heavy-duty diesel engines, as defined in § 86.090–2, constitute an averaging set. Averaging and trading between petroleum-fueled and methanol-fueled diesel engine families within the same primary service class is allowed.

(3) Otto-cycle engines may not participate in particulate averaging, trading, or banking.

(f) Banking of NO_x and particulate emission credits. (1) Credit deposits. (i) Emission credits may be banked only from engine families produced during the three model years prior to the effective model year of a new HDE NO_x or particulate emission standard. Credits may *not* be banked from engine families made during any other model year. Particulate emission credits may be banked only when a change in the particulate emission standard occurs. NO_x emission credits may be banked only when a change in the NO_x emission standard occurs, or, NO_x and particulate emission credits may be banked from engine families produced in any model year.

(ii) Manufacturers may bank credits only after the end of the model year and after EPA has verified their end-of-year report. During the model year and before submittal of the end-of-year report, credits originally designated in the certification process for banking will be considered reserved and may be redesignated for trading or averaging.

(2) Credit withdrawals. (i) Banked/reserved credits shall be available for use three model years prior to, through two model years immediately after the effective date of a new HDE NO_x or particulate emission standard, as applicable. However, credits not used within the period specified above shall be forfeited, or, banked credits shall be available for use within five model years following the model year in which they were generated. Credits not used within the period specified above shall be forfeited.

(ii) Manufacturers withdrawing banked emission credits shall indicate so during certification and in their credit reports, as described in § 86.091–23.

(3) Use of banked emission credits. The use of banked credits shall be within the restrictions described in paragraphs (d) and (e) of this section, and only for the following purposes:

(i) Banked credits may be used singly for a given engine family, in averaging, or in trading, or in any combination thereof, during the certification period. Credits declared for banking from the previous model year but unreviewed by EPA may also be used. However, if EPA finds that the reported credits can not be verified, they will be unavailable for use.

(ii) Banked credits may not be used for NO_x or particulate averaging and trading to offset emissions that exceed an FEL. Banked credits may not be used to remedy an in-use nonconformity determined by a Selective Enforcement Audit or by in-use testing.

(g) Referring to paragraph (f)(1)(i) of this section, credits generated in a given model year for use in the subsequent (next) model year's trading program may remain reserved. Use of this provision requires that the end-of-model year report for the year the credits are generated designate that credits are intended for trading in the next model year and state the amount of credits to be traded. Any such credits must be used in trading during the next model year and would be lost at the end of that model year if not used for trading. The only exception would be if the credit generation/use occurred within model years when the banking program allowed deposit/withdrawals, respectively. In these situations the credit could be banked if not used, subject to the other provisions of the banking program.

(h)(1) The following paragraphs assume NO_x and particulate NCPs will be available for the 1991 and later model year HDEs.

(2) Engine families using NO_x and/or particulate NCPs but not involved in averaging:

(i) May not *generate* either NO_x or particulate credits for banking and trading.

(ii) May *not* use either NO_x or particulate credits from banking and trading.

(3) If a manufacturer has any engine family upon which application of NCPs *and* credits is desired, that family must be separated into two distinct families. One family, whose FEL equals the standard, must use NCPs only while the other, whose FEL does not equal the standard, must use credits only.

(4) If a manufacturer has any engine family in a given averaging set which is using NO_x and/or particulate NCPs, none of that manufacturer's engine families in that averaging set may generate credits for banking and trading.

(5) If within a given averaging set, a manufacturer has NO_x or particulate credits available from banking but it desires to purchase NO_x or particulate NCPs instead the credit value would be eliminated.

(i) In the event of a negative credit balance in a trading situation, both the buyer and the seller would be liable.

20. Section 86.091–21 of Subpart A is proposed to be amended by revising paragraphs (b)(6)(i)(A), (b)(6)(i)(B), (b)(6)(ii)(A), (b)(6)(ii)(B) and adding (b)(6)(iii) to read as follows:

§ 86.091–21 Application of certification.

* * * * *

(b) * * *

(6)(i)(A) If the manufacturer elects to participate in the particulate averaging program for diesel light-duty vehicles and/or diesel light-duty trucks, the application must list the particulate FEL and the projected U.S. production volume of the family for the model year.

(B) The manufacturer shall choose the level of the family particulate emission limits, accurate to one-hundredth of a gram per mile.

* * * * *

(ii)(A) If the manufacturer elects to participate in the NO_x averaging program for light-duty trucks, the application must list the NO_x FEL and the projected U.S. production volume of the family for the model year.

(B) The manufacturer shall choose the level of the family NO_x emission limits, accurate to one-tenth of a gram per mile.

* * * * *

(iii) If the manufacturer elects to participate in any of the particulate and/or the NO_x averaging, trading, or banking programs for heavy-duty engines, the application must list the information required in § 86.091–15 and § 86.091–23.

* * * * *

21. Section 86.091–23 of Subpart A is proposed to be amended by revising paragraphs (f) and (g), and adding paragraphs (h), (i), (j) and (k), to read as follows:

§ 86.091–23 Required data.

* * * * *

(f) Additionally, manufacturers participating in the particulate averaging program for diesel light-duty vehicles and diesel light-duty trucks shall submit:

(1) In the application for certification, a statement that the vehicles for which certification is requested will not, to the best of the manufacturer's belief, when included in the manufacturer's production-weighted average emission level, cause the applicable particulate standard(s) to be exceeded.

(2) No longer than 90 days after the end of a given model year of production of engine families included in one of the

diesel particulate averaging programs, the number of vehicles produced in each engine family at each certified particulate FEL, along with the resulting production-weighted average particulate emission level.

(g) Additionally, manufacturers participating in the NO_x averaging program for light-duty trucks shall submit:

(1) In the application for certification, a statement that the vehicles for which certification is required will not, to the best of the manufacturer's belief, when included in the manufacturer's production-weighted average emission level, cause the applicable NO_x standard(s) to be exceeded.

(2) No longer than 90 days after the end of a given model year of production of engine families included in the NO_x averaging program, the number of vehicles produced in each engine family at each certified NO_x FEL, along with the resulting production-weighted average NO_x emission level.

(h) Additionally, manufacturers participating in any of the NO_x and/or particulate averaging, trading, or banking programs for heavy-duty engines shall submit:

(1) In the application for certification:

(i) A statement that the engines for which certification is requested will not, to the best of the manufacturer's belief, when included in any of the averaging, trading, or banking programs cause the applicable NO_x or particulate standard(s) to be exceeded.

(ii) The type (NO_x or particulate) and the projected number of credits generated/needed for this family, the applicable averaging set, the projected U.S. production volumes, and the values required to calculate credits as given in § 86.091–15. Manufacturers shall also submit how and where credit surpluses are to be dispersed and how and through what means credit deficits are to be met, as explained in § 86.091–15.

(2) Quarterly reports for each engine family participating in any of the trading programs.

(i) These reports shall be submitted within 30 days after the end of each calendar year quarter (*i.e.*, March 30, June 30, September 30, and December 31) to: Director, Manufacturers Operations Division (EN–340F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

(ii) These reports shall indicate the engine family, the averaging set, the actual quarterly and cumulative U.S. production volumes; the values required to calculate credits as given in § 86.091–15, and the resulting type (NO_x or particulate) and number of credits generated/required. Manufacturers shall also submit how and where credit surpluses are to dispersed and how and through what means credit deficits are to be met.

(3) End-of-year reports for each engine family participating in any of the averaging, trading, or banking programs.

(i) These reports shall be submitted within 30 days of the end of the model year to: Director, Manufacturers Operations Division (EN–340F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

(ii) These reports shall indicate the engine family, the averaging set, the actual U.S. production volume, the values required to calculate credits as given in § 86.091–15, and the resulting type (NO_x or particulate) and number of credits generated/required. Manufacturers shall also submit how and where credit surpluses were dispersed (or are to be banked) and how and through what means credit deficits were met.

(i) Failure by a manufacturer participating in the averaging, trading, or banking programs to submit any quarterly or end-of-year report (as applicable) in the specified time for all vehicles and engines that are part of an averaging set is a violation of section 203(a)(1) of the Clean Air Act for each such vehicle and engine.

(j) Failure by a manufacturer generating credits for deposit only in either the HDE NO_x or particulate banking programs to submit their end-of-year reports in the applicable specified time period (*i.e.*, 30 days after the end of the model year) shall result in the credits not being available for use until such reports are received and verified. Use of projected credits pending verification will not be permitted in these circumstances.

(k) Engine families certified using NCPs are not required to meet the requirements outlined above.

22. Section 86.091–30 of Subpart A is proposed to be amended by revising paragraphs (a)(1)(i), (a)(10), (a)(11), (b)(3), (c)(1)(iii) introductory text, (c)(1)(iv) and (c)(4) to read as follows:

§ 86.091–30 Certification.

(a)(1)(i) If, after a review of the test reports and data submitted by the manufacturer, data derived from any inspection carried out under § 86.091–7(d), and any other pertinent data or information, the Administrator determines that a test vehicle(s) (or test engine(s)) meet(s) the requirements of the Act and of this subpart, he will issue a certificate of conformity with respect to such vehicle(s) (or engine(s)) except in cases covered by paragraphs (a)(1)(ii) and (c) of this section.

* * * * *

(10)(i) For diesel light-duty vehicle and diesel light-duty truck families which are included in a particulate averaging program, the manufacturer's production-weighted average of the particulate emission limits of all engine families in a participating class or classes shall not exceed the applicable diesel particulate standard, or the composite particulate standard defined in § 86.090–2 as appropriate, at the end of the model year, as determined in accordance with 40 CFR Part 86. The certificate shall be void *ab initio* for those vehicles causing the production-weighted FEL to exceed the particulate standard.

(ii) For all heavy-duty diesel engines which are included in the particulate averaging, trading, or banking programs under § 86.091–15:

(A) All certificates issued are conditional upon the manufacturer complying with the provisions of § 86.091–15 and the averaging, trading, and banking related provision of other applicable sections, both during and after the model year production.

(B) Failure to comply with all provisions of § 86.091–15 will be considered to be a failure to satisfy the conditions upon which the certificate was issued, and the certificate may be deemed void *ab initio*.

(C) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied or excused.

(11)(i) For light-duty truck families which are included in a NO_x averaging program, the manufacturer's production-weighted average of the NO_x emission limits of all such engine families shall not exceed the applicable NO_x emission standard, or the composite NO_x emission standard defined in § 86.088–2, as appropriate, at the end of the model year, as determined in accordance with 40 CFR Part 86. The certificate shall be void *ab initio* for those vehicles causing the production-weighted FEL to exceed the NO_x standard.

(ii) For all heavy duty engines which are included in the NO_x averaging, trading, or banking programs under § 86.091–15:

(A) All certificates issued are conditional upon the manufacturer complying with the provisions of § 86.090–15 and the averaging, trading, and banking related provision of other applicable sections, both during and after the model year production.

(B) Failure to comply with all provisions of § 86.091–15 will be

considered to be a failure to satisfy the conditions upon which the certificate was issued, and the certificate may be deemed void *ab initio*.

(C) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied or excused.

(b) * * *

(3) If after a review of the test reports and data submitted by the manufacturer, data derived from any additional testing conducted pursuant to § 86.090–29, data or information derived from any inspection carried out under § 86.091–7(d) or any other pertinent data or information, the Administrator determines that one or more test vehicles (or test engines) of the certification test fleet do not meet applicable standards (or family emission limits, as appropriate), he will notify the manufacturer in writing, setting forth the basis for his determination. Within 30 days following receipt of the notification, the manufacturer may request a hearing on the Administrator's determination. The request shall be in writing, signed by an authorized representative of the manufacturer and shall include a statement specifying the manufacturer's objections to the Administrator's determination and data in support of such objections. If, after a review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he shall provide the manufacturer a hearing in accordance with § 86.078–6 with respect to such issue.

* * * * *

(c) * * *

(1) * * *

(iii) Any EPA Enforcement Officer is denied access on the terms specified in § 86.091–7(d) to any facility or portion thereof which contains any of the following:

* * * * *

(iv) Any EPA Enforcement Officer is denied "reasonable assistance" (as defined in § 86.091–7(d) in examining any of the items listed in paragraph (c)(1)(iii) of this section.

* * * * *

(4) In any case in which certification of a vehicle (or engine) is proposed to be withheld, denied, revoked, or suspended under paragraph (c)(1) (iii) or (iv) of this section, and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.091–7(d) in fact occurred, the manufacturer, if he wishes to contend that, even though the violation occurred, the vehicle (or engine) in question was not involved in the violation to a degree that would warrant withholding, denial, revocation, or suspension of certification under either paragraph (c)(1) (iii) or (iv) of this section, shall have the burden of establishing that contention to the satisfaction of the Administrator.

* * * * *

23. Section 86.091–35 of Subpart A is proposed to be amended by adding paragraphs (a)(3)(iii)(L) and (a)(3)(iii)(M) to read as follows:

§ 86.091–35 Labeling.

(a) * * *

(3) * * *

(iii) * * *

(L) For heavy duty engines which are included in the particulate averaging, trading, or banking programs, the particulate family emission limit to which the engine is certified.

(M) For heavy duty engines which are included in the NO_x averaging, trading, or banking programs, the NO_x family emission limit to which the engine is certified.

* * * * *

24. Section 86.094–11 of Subpart A is proposed to be amended by revising paragraph (a)(1)(iv)(B) to read as follows:

§ 86.094–11 Emission standards for 1994 and later model year diesel heavy-duty engines and vehicles.

(a)(1) * * *

(iv) * * *

(B) A manufacturer may elect to include all or some of its diesel heavy-duty engine families in some or all of the particulate averaging, trading, or banking programs for heavy-duty engines, within the restrictions described in § 86.091–15. If the manufacturer elects to include engine families in any of these programs, the particulate FEL may not exceed:

(*1*) For engine families intended for use in *urban buses*, 0.25 gram per brake horsepower-hour (0.093 gram per megajoule).

(*2*) For engine families *not* intended for use in urban buses, 0.60 gram per horsepower (0.22 gram per megajoule).

(*3*) These ceiling values apply whether credits are used in an averaging program or applied singly to a given engine family.

* * * * *

Subpart L—[Amended]

25. A new § 86.1104–90 is proposed to be added to Subpart L to read as follows:

§ 86.1104–90 Determination of upper limits.

(a) The upper limit applicable to a pollutant emission standard for a subclass of heavy-duty engines or heavy-duty vehicles for which an NCP is established in accordance with § 86.1103–87, shall be the previous pollutant emission standard for that subclass.

(b) If no previous standard existed for the pollutant under paragraph (a) of this section, the upper limit will be developed by EPA during rulemaking.

(c) If a manufacturer participates in any of the emissions averaging, or banking programs, and carries over certification of an engine family from the prior model year, the upper limit for that engine family shall be the family emission limit of the prior model year, unless the family emission limit is less than the upper limit determined in paragraph (a) of this section.

26. A new § 86.1104–91 is proposed to be added to Subpart L to read as follows:

§ 86.1104–91 Determination of upper limits.

(a) The upper limit applicable to a pollutant emission standard for a subclass of heavy-duty engines or heavy-duty vehicles for which an NCP is established in accordance with § 86.1103–87, shall be the previous pollutant emission standard for that subclass.

(b) If no previous standard existed for the pollutant under paragraph (a) of this section, the upper limit will be developed by EPA during rulemaking.

(c) If a manufacturer participates in any of the emissions averaging, trading, or banking programs, and carries over certification of an engine family from the prior model year, the upper limit for that engine family shall be the family emission limit of the prior model year, unless the family emission limit is less than the upper limit determined in paragraph (a) of this section.

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Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 170

Establishment and Discontinuance Criteria for Airport Traffic Control Tower Facilities; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 170

[Docket No. 25909; Notice 89-13]

RIN 2120-AC98

Establishment and Discontinuance Criteria for Airport Traffic Control Tower Facilities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposed rule prescribes benefit-cost based criteria for establishment and discontinuance of visual flight rule, (VFR), airport traffic control tower facilities. It considers traffic density (number of aircraft operations without consideration of aircraft size), passengers served, and aircraft operating efficiencies along with the cost of establishing and maintaining or decommissioning a tower. The Federal Aviation Administration utilizes these criteria to assess benefits and costs associated with establishing or decommissioning an airport traffic control tower at an airport as a part of its mission to maximize safety and efficiency throughout the airport and airway system consistent with available resources. This regulation, if promulgated, would implement the requirements of recent legislation requiring the publication of criteria for navigational aids and airport traffic control towers as a Federal regulation.

DATES: Comments must be received on or before July 8, 1989.

ADDRESSES: Send comments on the rule in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-210), Docket No. 25909, 800 Independence Ave., SW., Washington, DC 20591; or deliver comments in triplicate to: FAA Rules Docket, Room 915-G, 800 Independence Ave., SW., Washington, DC 20591.

Comments may be examined in the Rules Docket, weekdays except Federal Holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Ward Keech, Office of Aviation Policy and Plans, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267-3312.

Comments invited. Interested persons are invited to participate in these preliminary rulemaking procedures by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking further rulemaking action. Persons wishing the FAA to acknowledge the receipt of their comment submitted in response to this notice must submit with those comments a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No.25909." The postcard will be date stamped and returned to commenter. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. A final rule will be issued, if it is determined to be in the public interest to proceed with further rulemaking after considering the available data and comment received in response to the Notice of Proposed Rulemaking.

Availability of NPRM. Any person may obtain a copy of this Notice by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center (APA-230), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Requests should identify the number of this Notice. Persons interested in being placed on the mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

SUPPLEMENTARY INFORMATION:

Background

The Federal Aviation Administration has the responsibility to establish or discontinue airport traffic control towers through the national airspace system when activity levels and safety considerations merit such action. Criteria for the installation of towers have been historically developed by the FAA and its predecessor organization, approved internally within the organization, and published since 1951. Current criteria, including the general qualifications necessary to become a candidate site, for establishment and discontinuance of visual flight rule, airport traffic control towers are published in *Airway Planning Standard Number One—Terminal Air Navigation Facilities and Air Traffic Control Services* (APS-1) (FAA Order No. 7031.2C) November 15, 1984 and detailed in Report Number APO-83-2, *Establishment and Discontinuance Criteria for Airport Traffic Control Towers.* Decisions to establish and operate airport traffic control towers have been and will continue to be based upon benefits exceeding costs of such actions. The *Airport and Airway Safety and Capacity Expansion Act of 1987,* Pub. L. 100-223, Section 308 (49 U.S.C. 1348), mandated that these criteria be revised and for the first time promulgated through Federal administrative regulation.

Criteria to establish Airport Traffic Control Towers has evolved over time. Initially applied in 1951, a minimum number of operations was required to qualify as a tower candidate. From 1951 through 1974, FAA established minimum qualifying levels of 24,000 annual itinerant operations at air carrier airports and 50,000 annual itinerant operations at general aviation (GA) airports. Differential levels of operations were established under the theory that at air carrier airports, there was a greater mix of traffic, utilizing aircraft with a wider range of performance characteristics, thus creating a greater potential for accidents.

In 1975, the criteria were revised to incorporate benefit cost analysis. To qualify for establishment of a tower, the ratio of benefits to costs must equal or exceed one.

$$\frac{\text{Benefits}}{\text{Costs}} > 1$$

Forming the basis of current criteria, the 1975 criteria considered collision and accident risk, reduction in flying time, mix of aircraft types, percentage of passengers injured and percent of aircraft damaged.

Criteria for the discontinuance of tower services have been employed since 1956. In 1977 the first economic based discontinuance criteria was detailed in draft report, "An Analysis of Continued Operation of Selected Airport Traffic Control Towers", which provided a comprehensive benefit-cost approach to assess the merits of continued funding of towers. Locations were identified as candidates for discontinuance whenever benefits from continued tower operation were less than operating and maintenance costs over a 15-year forecast period.

In 1983 the FAA completed a revised economic analysis for VFR airport traffic control towers and revised the establishment discontinuance criteria.

These criteria will remain in effect until replaced by revisions adopted through the rulemaking process.

The current criteria in effect today are divided into two phases. Phase I criteria use a ratio test based on one year's activity for three consecutive reporting periods to identify possible sites for tower establishment or discontinuance. A site becomes a candidate for Phase II establishment analysis if the ratio sum of the following formula equals or exceeds 1:

$$\frac{AC}{38,000}+\frac{AT}{90,000}+\frac{GAI}{160,000}+\frac{GAL}{280,000}+\frac{MI}{48,000}+\frac{ML}{90,000}>1$$

whereas a site becomes a candidate for Phase II discontinuance analysis if the ratio sum of the following formula is less than 1:

$$\frac{AC}{15,000}+\frac{AT}{40,000}+\frac{GAI}{75,000}+\frac{GAL}{125,000}+\frac{MI}{20,000}+\frac{ML}{35,000}<1$$

where:
AC=Air Carrier Operations
AT=Air Taxi Operations
GAI=General Aviation Itinerant Operations
GAL=General Aviation Local Operations
MI=Military Itinerant Operations
ML=Military Local Operations

The formula considers activity by user classes and differentiates by aircraft size by evaluating air carrier and commuter activity, which are defined in part by aircraft size, in separate classes. Phase I criteria were developed to manually identify potential candidates which have a chance of qualifying for establishment or discontinuance under the more rigorous, detailed benefit-cost analysis calculated under Phase II criteria. Candidate sites passing the Phase I screening are then subject to a site specific Phase II benefit-cost analysis. Phase II criteria compare the present value of tower benefits with present value of tower costs over a fifteen year time frame.

The methodology to calculate benefits and costs for establishment and discontinuance criteria, developed in 1983, are still in effect today (see APO–83–2, *Establishment and Discontinuance Criteria for Airport Traffic Control Towers).*

Site specific activity forecasts are used to estimate three categories of VFR tower benefits: benefits from prevented collisions between aircraft, benefits from other prevented accidents, and benefits from reduced flying time. Considered in the benefit analysis is the mix of aircraft types: air carrier, air taxi, general aviation, and military, and levels of local and itinerant traffic operating within the terminal area. Also considered are the number of passengers and crew aboard aircraft who might be killed or injured should a collision or other type of tower-preventable accident occur. Dollar values are assigned to prevented fatalities, injuries, reduced aircraft operating cost and passengers' time saving to provide a common basis for comparing costs and benefits.

Tower costs include annual costs of staffing, maintenance, equipment, supplies and leased services. Establishment costs also include non-recurring investment costs such as facilities, equipment, and operational start-up. Tower discontinuance criteria use the same annual costs as establishment criteria. Discontinuance criteria also consider the costs of closing the tower.

A location meets Phase II economic tower establishment criteria when the benefits which derive from operating the tower exceed the installation and operation costs—the benefit-cost ratio is equal to or greater than one. A tower meets Phase II discontinuance criteria when the life-cycle costs of continued operation exceed the benefits—the benefit-cost ratio is less than one. If the tower meets the initial benefit-cost screening for either establishment or discontinuance, then a site-specific analysis is performed.

Proposed Criteria

As in past criteria, the proposed criteria for VFR airport traffic control tower establishment requires that candidate airports have life-cycle benefits that exceed life-cycle costs.

$$\frac{\text{Present Discounted Value Benefits}}{\text{Present Discounted Value Costs}}>1$$

Criteria for airport control tower discontinuance specify that the present value of benefits derived from continued tower operation compared to the costs of continued operation are less than one.

$$\frac{\text{Present Discounted Value Benefits}}{\text{Present Discounted Value of Costs}}<1$$

New proposed establishment and discontinuance criteria for airport traffic control towers, procedures to calculate benefits and costs and the results when criteria are applied to airports using current forecasts of activity are detailed in FAA report number FAA–APO–88–12, *Establishment Criteria for Airport Traffic Control Towers.* A copy of this report has been placed in the public docket for this rulemaking. The criteria methodology through which benefits and costs are calculated have been updated and revised to:

Comply with Pub.L.100–223.
Eliminate Phase I Criteria.
Update accident rate analysis.
Update economic values used to calculate benefits and costs.

The Congressional mandate in Pub.L. 100–223, Sec. 308 requires that certain facilities and equipment establishment criteria be promulgated by regulation for the first time. In addition the statute requires that the criteria eliminate qualification distinctions based on aircraft size. The proposed criteria will eliminate distinctions according to classes of aircraft in two ways. First, by eliminating Phase I criteria, the distinction based on aircraft size will be removed ("air carrier" and "commuter" service is defined in part by aircraft size). Second, the methodology used to calculate benefits under Phase II criteria will contain no reference to aircraft size. The only distinctions in benefit-cost calculation will be according to three functional user groups: scheduled commercial, nonscheduled commercial and noncommercial. These user groups have been constructed to reflect differences in the nature of public transport in today's deregulated environment, operating requirements and sources of data considered helpful in obtaining accurate estimates of potential tower benefits.

In addition, Phase I will be eliminated to reduce confusion regarding the meaning of the formula result. Phase I was constructed as a simplified screening device to identify all potential candidates for future benefit-cost analysis, but Phase I does not represent an adequate benefit-cost result. Because of improved automation and the widespread availability of computer equipment, there is no longer a need for the preliminary screening provided by Phase I criteria. Detailed Phase II benefit-cost analysis can now be accomplished quickly and accurately.

Benefit-cost analysis of potential airport traffic control towers will be based on two types of benefits, safety and efficiency, and two types of costs, annual and investment. Safety benefits derive from avoiding accidents and their associated fatalities, injuries and property damage. Efficiency benefits derive from the reduction in flying time—saving time of aircraft occupants and reducing variable operating costs for aircraft. Investment costs include the initial FAA costs associated with installing and staffing a new tower. Annual costs are comprised of staffing costs for operation and maintenance, leased communications and administrative overhead. Discontinuance criteria substitute decommissioning costs for investment costs in the calculation of benefits.

Explicit values assigned to passenger time, life, injury, aircraft replacement and restoration and aircraft operating costs provide a basis for comparing benefits to costs across airports. Economic benefits are based on airport specific aviation activity projected in FAA's annual *Terminal Area Forecast.* Benefits and costs will be estimated for a 15-year life cycle and are discounted to their present value using a 10 percent discount rate as directed by the Office of Management and Budget.

How the Criteria Apply

FAA uses the benefit-cost criteria to determine the eligibility of sites for establishment or discontinuance of VFR, airport traffic control tower facilities. A site is eligible for establishment of a facility or service when the ratio of the benefits to the costs of establishment equals or exceeds 1.0. A facility or service may be discontinued if the benefits expected to be realized over the remainder of its life cycle fall below its recurring operation and decommissioning costs. Additional factors, such as terrain, weather, operational requirements or national defense security may also be considered in the evaluation of sites as candidates for establishment or decommissioning.

Meeting the economic criteria is usually a necessary condition to include a site in the FAA budget. However, meeting the criteria is not a guarantee that a site will be funded.

Criteria Results

All nonmilitary airports included in the Terminal Area Forecast were evaluated under the old and new criteria for establishment or discontinuance of an airport traffic control tower. All 3,498 nontowered airports, along with 20 FAA contract towered airports, 42 nonfederal contract towered airports, and 23 airports with decommissioned and temporarily closed towers were considered for tower establishment. Of these sites, 33 had benefit-cost ratios (B/C ratio) of 1.0 or greater and could be considered candidates for tower establishment on a site specific basis. An additional 400 airports have FAA controlled towers and were considered for discontinuance. Of the 400, 26 had benefit-cost ratios less than 1 and could be evaluated for discontinuance on a site specific basis.

Need for the Regulation

This rule is proposed under the authority of the Airport and Airway Safety and Capacity Expansion Act of 1987, Pub. L. 100–223, (49 U.S.C. 1348). which requires tha promulgation of regulations to establish criteria for the installation of airport control towers and other navigational aids. The promulgation of this rule would satisfy the requirements of the legislation.

Regulatory Evaluation

The promulgation of this regulation is expected to have only minimal impact, if any, on the public. There is no new cost to the FAA of applying the proposed criteria. As with current criteria, costs to establish an air traffic control tower are not incurred until a site specific benefit-cost analysis is completed and the resulting benefit-cost ratio equals or exceeds 1. Under this initial screening where benefit-cost ratios are computed using national average costs, 33 sites are identified to be analyzed on a site-specific basis. This compares to a total 32 sites using existing criteria with accident rates, economic values and costs which have not been updated.

The application of the proposed criteria is a part of normal procedures in analyzing potential ATCT sites and the current rule merely further formalizes these procedures. The benefit of this rule is to inform the public of the benefit cost criteria used by the FAA for the allocation of resources for establishment of air traffic control towers and further assure adequate consideration of the safety and efficiency effects of potential traffic control towers. Since this action has no identifiable cost impact to the public and has a positive, although unquantifiable benefit, a detailed regulatory evaluation is unnecessary.

Regulatory Flexibility Determination

This rule provides a guide for internal FAA managsment in the establishment and discontinuance of air traffic control towers; hence, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that such a regulation does not have Federalism implications warranting the preparation of a Federalism Assessment.

The Proposal

The FAA is considering adding a new Part 170 to the Federal Aviation Regulations (14 CFR Part 170) to list the criteria by which the FAA will base its decision to establish or discontinue an airport traffic control tower at airports. The airport traffic control tower criteria are assigned to Subpart B of the new part.

Since the proposal contained in this FAA document would impose no additional administrative cost on the FAA, the estimated benefits are expected to exceed the estimated costs of their implementation. For the reasons discussed above, this proposal, if adopted, would not have significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required. In addition, for the same reasons, the proposal is not a "major rule" under Executive Order 12291 and is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 170

Air traffic control.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to add a new Part 170 of the Federal Aviation Regulations (14 CFR Part 170) as follows:

Part 170 is added to read as follows:

PART 170—ESTABLISHMENT AND DISCONTINUANCE CRITERIA FOR AIR TRAFFIC CONTROL SERVICES AND NAVIGATIONAL FACILITIES

Subpart A—General

Sec.
170.1 Scope.
170.3 Definitions.

Subpart B—Airport Traffic Control Tower

170.11 Scope.
170.13 Airport Traffic Control Tower (ATCT) establishment criteria.
170.15 ATCT discontinuance criteria.

Authority: 49 U.S.C. 1343, 1346, 1348, 1354(a), 1355, 1401, 1421 (as amended by Pub. L. 100–223), 1422 through 1430, 1472(c), 1502, and 1522; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

Subpart A—General

§ 170.1 Scope.

This subpart sets forth establishment and discontinuance criteria for navigation aids operated and maintained by the United States.

§ 170.3 Definitions.

As used in this subpart—

"Air carrier operations." Arrivals and departures performed by air carriers certificated in accordance with FAR Parts 121 and 127.

"Air navigation facility" (NAVAID). Any facility used in, available for use in, or designated for use in aid of air navigation. Included are landing areas, lights, any apparatus or equipment for disseminating weather information, for signaling, for radio direction-finding, or for radio or other electronic communication, and any other structure or mechanism having a similar purpose for guiding or controlling flight in the air or the landing or takeoff of aircraft.

"Air traffic clearance." An authorization by air traffic control, for the purpose of preventing collision between known aircraft, for an aircraft to proceed under specified traffic conditions within controlled airspace.

"Air traffic control" (ATC). A service that promotes the safe, orderly, and expeditious flow of air traffic, including airport, approach, departure, and enroute air traffic control.

"Air taxi." An air carrier certificated in accordance with FAR Part 135 and authorized to provide, on demand, public transportation of persons and property by aircraft. These carriers generally operate small aircraft "for hire" for specific trips.

"Air traffic controller." Person authorized to provide air traffic service. Refers to enroute and terminal control personnel.

"Aircraft operations." The airborne movement of aircraft in controlled or noncontrolled airport terminal areas, and counts at enroute fixed or other points where counts can be made. There are two types of operations: local and itinerant.

(a) Local operations are performed by aircraft which:

(1) Operate in the local traffic pattern or within sight of the airport.

(2) Are known to be departing for, or arriving from flight in local practice areas located within a 20-mile radius of the airport.

(3) Execute simulated instrument approaches or low passes at the airport.

(b) Itinerant operations are all aircraft operations other than local operations.

"Airport surveillance radar" (ASR). FAA short-range radar for terminal air traffic control. This radar provides aircraft position information by azimuth and range data without elevation data. Various models are designed for ranges of 30 to 60 miles.

"Airport traffic control tower." A terminal facility which through the use of air/ground communications, visual signaling, and other devices, provides ATC services to airborne aircraft operating in the vicinity of an airport and to aircraft operating on the airport area.

"Air traffic control radar beacon system." The form of secondary radar used in the air traffic control system for control purposes. It consists of a coded signal initiated from the ground coupled with a similar reply from the aircraft to provide accurate identification and position information.

"Approach." The flight path established by the FAA to be used by aircraft on landing at a runway.

"Approach control facility." A terminal air traffic control facility providing approach control service.

"Alternate airport." An airport specified on a flight plan to which a flight may proceed when a landing at the point of first intended landing becomes inadvisable.

"Arrival." Any aircraft arriving at an airport is referred to as an arrival.

"Benefit-cost ratio." The quotient of the discounted life-cycle benefits of an air traffic control service or navigation aid facility (i.e., ATCT) divided by the discounted life-cycle costs.

"Ceiling." The vertical distance between the ground or water and the lowest layer of clouds or obscuring phenomena that is reported as "broken," "overcast," or "obstruction."

"Commuter air carrier." An air carrier certificated in accordance with FAR Part 135 which operates aircraft with a maximum of 60 seats, and provides at least five scheduled round trips per week between two or more points, or carries mail.

"Commuter/air taxi operations." Those arrivals and departures performed by air carriers certificated in accordance with FAR Part 135.

"Criteria." The standards used by the FAA for the determination of establishment or discontinuance of a service or facility at an airport.

"Control tower." See Airport Traffic Control Tower.

"Departure." Any aircraft taking off from an airport is referred to as a departure.

"Discontinuance." The withdrawal of a service and/or facility from an airport.

"Establishment." The provision of a service or facility to a candidate airport.

"FAA." Federal Aviation Administration.

"General aviation." All civil aviation activity except that of air carriers certificated in accordance with FAR Parts 121, 123, 127, and 135. The types of aircraft used in general aviation (GA) activities cover a wide spectrum from corporate multi-engine jet aircraft piloted by professional crews to amateur-built single engine piston acrobatic planes, balloons, and dirigibles.

"General aviation operations." Arrivals and departures of all civil aircraft, except those classified as air carrier and commuter/air taxi.

"IFR." See Instrument Flight Rules.

"Instrument approach." A series of predetermined maneuvers for the orderly transfer of an aircraft under instrument flight conditions from the beginning of the initial approach to a landing, or to a point from which a landing may be made visually. It is prescribed and approved for a specific airport by competent authority (Federal Aviation Regulation Part 91).

"Instrument flight rules." (IFR) Rules governing the procedures for conducting instrument flight.

"Instrument landing system." (ILS). An instrument landing system whereby the pilot guides his approach to a runway solely by reference to instruments in the cockpit. In some instances the signals received from the ground can be fed into the automatic pilot for automatically controlled approaches.

"Instrument meteorological conditions." (IMC). Weather conditions below the minimum prescribed for flight under Visual Flight Rules.

"Instrument operation." Air aircraft operation in accordance with an IFR flight plan or an operation where IFR separation between aircraft is provided by a terminal control facility or air route traffic control center.

"Life-cycle benefits." The value of services provided to aviation users over the life span of a facility or service.

"Life-cycle costs." The value of research and development costs, investment costs, maintenance costs, and termination costs over the life span of a facility or service.

"LORAN–C." An electronic navigational system by which hyperbolic lines of position are determined by measuring differences in the time of reception of synchronized pulse signals from two fixed transmitters.

"Mean sea level" (MSL). The base commonly used in measuring altitudes.

"Maintenance costs." The costs incurred in servicing and maintaining a facility after establishment.

"Microwave landing system" (MLS). A landing system which enables equipped aircraft to make curved and closely-spaced approaches to properly instrumented airports.

"Non-scheduled Commercial Service." The carriage of aircraft in air commerce of persons or property for compensation or hire that are not operated in regularly scheduled service such as charter flights.

"Non-commercial Traffic." All aircraft operations that are conducted free of compensation.

"Non-precision approach procedure." An FAA standard for approaching an IFR runway where no electronic glide slope is available.

"Present value" (PV). The value of a stream of future benefits or costs that are discounted to the present.

"PVB" or "BPV." The discounted value of life cycle benefits.

"PVC" or "CPV." The discounted value of life cycle.

"PVCM" or "CMPV." The discounted value of maintenance costs less termination costs over a facility's remaining life cycle.

"Primary radar." A radar system in which a minute portion of a radio pulse transmitted from a site is reflected by an object and received back at that site for processing and display at an air traffic control facility.

"Radar beacon." A radar receiver-transmitter aboard an aircraft that transmits a coded signal whenever its receiver is triggered by an interrogating radar. The coded reply can be used to determine position in terms of range and bearing from the beacon. Also, called beacon, radar, and radar transponder.

"Radar beacon ATCRBS" (Secondary Radar). A radar system in which the object to be detected is fitted with cooperative equipment in the form of a radar receiver/transmitter (transponder). Radar pulses transmitted from the searching transmitter/receiver (interrogator) site are received by the cooperative equipment and used to trigger a distinctive transmission from the transponder. This latter transmission, rather than a reflected signal, is then received back at the transmitter/receiver site for processing and display at an air traffic control facility.

"Runway." A defined rectangular area on a land airport prepared for the landing and takeoff run of aircraft along its length.

"Runway visual range." The horizontal distance along a runway a pilot touching down can expect to see the high intensity runway lights.

"Scheduled commercial service." The carriage of aircraft in air commerce of persons or property for compensation or hire based on published flight schedules.

"Separation." In air traffic control, the spacing of aircraft to achieve their safe and orderly movement in flight and while landing and taking off.

"Takeoff clearance." Authorization by an airport traffic control tower for an aircraft to take off.

"Terminal radar service area" (TRSA). Airspace surrounding designated airports wherein ATC provides radar vectoring, sequencing, and separation on a full-time basis for all IFR and participating VFR Aircraft. Service provided in a TRSA is called Stage III Service. TRSAs are depicted on VFR aeronautical charts. Pilot participation is urged but is not mandatory.

"Tower." See Airport Traffic Control Tower.

"Tower cab." An ATC facility located at an airport. Controllers at these facilities direct ground traffic, take-offs, and landings.

"Traffic pattern." The flow of aircraft operating on and in the vicinity of an airport during specified wind conditions as established by appropriate authority.

"Traffic advisories." Advisories issued to alert pilots to other known or observed air traffic which may be in such proximity to the position or intended route of flight of their aircraft to warrant attention.

"VFR" (Visual Flight Rules). The symbol used to designate Visual Flight Rules.

"VFR traffic." Aircraft operated solely in accordance with Visual Flight Rules.

"Visual meteorological conditions" (VMC). Meteorological conditions expressed in terms of visibility, distance from cloud, and ceiling equal to or better than specified minima.

"Visual flight rules" (VFR). Rules that govern the procedures for conducting flight under visual conditions. The term "VFR" is also used in the United States to indicate weather conditions that are equal to or greater than minimum VFR requirements. In addition, it is used by pilots and controllers to indicate type of flight plan.

Subpart B—Airport Traffic Control Towers

§ 170.11 Scope.

This subpart sets forth establishment and discontinuance criteria for Airport Traffic Control Towers.

§ 170.13 Airport Traffic Control Tower (ATCT) establishment criteria.

(a) The following criteria along with general provisions specified in *Airway Planning Standard Number One, Terminal Air Navigation Facilities and Air Traffic Control Services*, FAA Order, 7031.2C, must be met before an airport can qualify for an ATCT:

(1) The airport whether publicly or privately owned must be open to and available for use by the public as defined in the Airport and Airway Improvement Act of 1982.

(2) The airport must be recognized by and contained within the National Plan of Integrated Airport Systems.

(3) Airport owners/authorities must have entered into appropriate assurances and covenants to guarantee that the airport will continue in operation for a long enough period to permit the amortization of the ATCT investment.

(4) The FAA must be furnished appropriate land without cost for construction of the ATCT.

(5) An airport meets the benefit-cost ratio criteria specified herein utilizing three consecutive FAA annual counts and projections of future traffic during the expected life of the tower facility. (An FAA annual count is a fiscal year or a calendar year activity summary. Where actual traffic counts are unavailable or not recorded, adequately documented FAA estimates of the scheduled and nonscheduled activity may be used.)

(b) An airport meets the establishment criteria when it satisfies paragraphs (a)(1) through (a)(5) of this section and its benefit-cost ratio calculated according to procedures described in *FAA Report number FAA–APO–88–12, Establishment and Discontinuance Criteria for Airport Traffic Control Towers*, dated December 1988, equals or exceeds one. As defined in § 170.3 of this part, the benefit-cost ratio is the ratio of the present value of the ATCT life-cycle benefits (BFV) to the present value of ATCT life-cycle costs (CPV).

$$BPV/CPV > 1.0$$

(c) The satisfaction of all the criteria listed in this section does not guarantee that the airport will receive a ATCT.

§ 170.15 ATCT Discontinuance criteria.

An ATCT will be subject to discontinuance when the continued maintenance costs less termination costs (CMPV) of the ATCT exceed the present value of its remaining life-cycle benefits (BPV):

$$BPV/CMPV < 1.0$$

Issued in Washington, DC on May 18, 1989.

Dale E. McDaniel,

Acting Associate Administrator for Policy, Planning and International Aviation.

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federal register

Thursday
May 25, 1989

Part IV

Environmental Protection Agency

Pesticides Required To Be Reregistered; List B; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPP-34002; FRL 3575-9]

Pesticides Required To Be Reregistered; List B

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is publishing a list (List B) of pesticides active ingredient cases (consisting of one or more chemically-related active ingredients) that are required to be reregistered under the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This is the second in a series of four such lists required by the Act. In addition to listing the pesticides, this notice describes the criteria which the Agency used in assigning pesticide active ingredients to List B, and discusses the significance of inclusion on List B. Inclusion on this list does not affect the registration status of any pesticide product. Publication of List B in the **Federal Register** initiates a process of accelerated reregistration and data call-in for products containing the listed pesticide active ingredients.

FOR FURTHER INFORMATION CONTACT: By mail: Jay S. Ellenberger, Special Review and Reregistration Division (H75008C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Office location and phone number: Rm. 728, Crystal Mall # 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7436).

SUPPLEMENTARY INFORMATION:

I. Reregistration of Pesticides

Section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1972, required that all registered pesticides be reregistered in accordance with new standards for reregistration contained in section 3(c)(5). These include, among other things, a determination by the Agency that the use of the pesticide will not cause unreasonable adverse effects on the environment [3(c)(5)(C) and (D)].

EPA established a Registration Standards process in 1980 to accomplish reregistration. Under this process, the Agency evaluates the existing scientific data base underlying an active ingredient, identifies in a Registration Standard document missing data needed to complete the assessment, and after acquiring all necessary data from registrants, would ultimately make a decision whether to reregister products and under what conditions and restrictions. Under this process, begun in 1980, EPA has evaulated approximately 25 pesticide active ingredients per year, and has, since 1987, initiated rereviews (termed Second Round Reviews) of pesticides with substantially complete date bases at the rate of approximately 10 per year. At that rate, the reregistration of all pesticide products would extend well beyond the year 2000.

II. IFRA Amendments of 1988

On October 25, 1988, the President signed a new law, the FIFRA Amendments of 1988, which, among other things, makes significant changes in the way EPA will carry out its responsibility to reregister currently registered pesticides. Section 4 of FIFRA, as amended, mandates an accelerated reregistration scheme, to be carried out in five phases over a 9-year period. The thrust of this phased approach is to generate a complete data base for each pesticide product before evaluation by the Agency and reregistration of products. The responsibility for making data available lies with pesticides registrants.

Briefly, FIFRA section 4(c) through (g) establish the following five phases of reregistration:

A. Phase I

1. Identification of active ingredients subject to reregistration. Each product containing an active ingredient that was first registered before November 1, 1984, must be reregistered.

2. Categorization of active ingredients into four lists (A, B, C, and D) according to priorities set by the Act. List A was published in the Federal Register of February 22, 1989 (54 FR 7740). This notice contains List B, which was issued by order on April 24, 1989, containing 150 active ingredient cases. Since the issuance of List B, the Agency has discovered that one act ingredient registered after November 1, 1984 (and therefore not subject to reregistration) was inadvertently included. This active ingredient (dimethazone) has been deleted from List B. Lists C and D will be issued by the Agency on or before July 24, 1989, and October 24, 1989, respectively.

3. Notification to registrants of listed active ingredients of when they must indicate their intention to reregister products (see Phase II for a brief description of the information registrants must furnish).

B. Phase II

1. Responses by registrants indicating whether they intend to seek reregistration.

2. Identification by registrants of applicable data requirements based upon regulations issued under FIFRA section 3, and of missing or inadequate studies.

3. Commitment by registrants to support the reregistration of their pesticide products by submission of missing studies or replacement of inadequate existing studies.

C. Phase III

1. Submission by registrants of summaries of previously submitted studies and reformats of certain studies according to guidance to be issued by the Agency.

2. Additional commitment by registrants to fill all applicable date requirements identified by the registrant.

D. Phase IV

1. Review by the Agency of the Phase II and III submissions.

2. Independent determination by the Agency of outstanding data requirements applying to each active ingredient.

3. Notification of registrants of the additional data requirements.

4. Commitment by registrants to fulfill those requirements.

E. Phase V

1. Review by the Agency of all data concerning an active ingredient (both existing studies deemed to be adequate and new studies generated by registrants).

2. Determination by the Agency whether products containing the active ingredient may be reregistered based upon the data reviewed.

3. Submission by registrants of product-specific data if necessary.

4. Reregistration of products, or other appropriate regulatory action.

All pesticide active ingredients for which a Registration Standard was not issued before December 24, 1988, are subject to the requirements of the phased approach outlined above.

III. Lists of Pesticides

A. What the Law Requires

Under Phase I, the Agency is required to develop and publish in the **Federal Register** four lists of pesticides active ingredients that must be reregistered. The first (List A) is a list of active ingredient cases for which Registration Standards had been issued as of December 24, 1988, the effective date of the new law. That list was published in the **Federal Register** of February 22, 1989 (54 FR 7740).

The other three lists (Lists B, C, and D) will include each active ingredient contained in a product first registered before November 1, 1984, for which a Registration Standard has not been issued. These lists are to be issued by the Agency in groups of 150 active ingredient cases in April and July 1989 (Lists B and C) with a final list or remaining active ingredients in October 1989 (List D). Each list will be published in the **Federal Register**, and a copy with be sent by certified mail to each registrant having a product containing a chemical on each list.

B. Statutory Priorities for Listing

FIFRA section 4(c)(1) sets out the priorities that the Agency must include in considering which pesticide active ingredients are to be included on List B. An active ingredient need only meet one criterion in order to be included on List B.

The statutory criteria that EPA must include in setting priorities for inclusion on List B are as follows (numbers in brackets indicate how many active ingredient cases meet that criterion):

1. *Food/feed use.* An active ingredient used on food or feed, or which may result in residues on food or feed, must be given priority. EPA has included on List B active ingredients having tolerances or exemptions from tolerances established under sections 408 and 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA), and other active ingredients which may result indirectly in residues in or on food or feed, such as active ingredients used in food processing. A substantial number of chemicals on List B are included because they meet the food/feed residue criterion [119].

2. *Potential ground water contaminants of toxicological concern.* Active ingredients that meet the criterion were drawn from an Agency document, "Pesticides in Ground Water Data Base: 1988 Interim Report, December 1988." Active ingredients listed in Table 1–1 of that report as having confirmed detections in ground water were considered for inclusion on List B [13].

3. *Potential residues in fish or shellfish.* Active ingredients meeting this criterion were identified from a data base maintained by the Agency's Office of Water Regulations and Standards of residues found in fish tissue. This list was augmented by identification of active ingredients having particular use patterns that may result in residues in fish because of application to or use in water, including antifouling uses, mosquito abatement, and aquatic industrial uses such as cooling towers and pulp and paper mills [28].

4. *Active ingredients with significant data gaps.* EPA identified active ingredients as meeting this criterion if:

a. A Registration Standard was scheduled for fiscal year 1989, but the Registration Standard had not been issued as of the effective date of FIFRA–88 (December 24, 1988). These active ingredients are considered to have significant data gaps. Such active ingredients could not be included on List A, and were therefore transferred to List B [30].

b. A Data Call-In notice has been issued under FIFRA section 3(c)(2)(B) for significant data gaps, including comprehensive Data Call-In notices issued during the last years [10].

c. The Agency-established Reference Dose (RfD) for the active ingredient has substantial uncertainty because of missing or inadequate chronic feeding, reproduction, or teratology studies. The source of these active ingredients is the Office of Pesticide Programs data base entitled the "RfD Tracking Report," which is updated monthly. If an active ingredient is listed in that report with an uncertainty factor of greater than 100 (higher uncertainty factors are assigned because of deficiencies in the data base), EPA considers that active ingredient to have significant data gaps [21].

5. *Active ingredients of concern for worker exposure because of agricultural, greenhouse, or nursey use.* Active ingredients meeting this criterion were identified from a list developed by the Office of Pesticide Programs of 406 pesticides used on farms, in greenhouses, and nurseries or in forests. The list, entitled "Active Ingredients in Agricultural Pesticides Potentially Subject ot Reentry Restrictions Under Proposed Regulations," was developed in conjunction with the Agency's proposed rule on Worker Protection Standards for Agricultural Pesticides (53 FR 25970, July 8, 1988) [31].

C. Additional Criteria for Inclusion on List B

Although FIFRA section 4(c) establishes priorities that the Agency must include in deciding upon List B, it does not limit the Agency solely to those criteria. EPA has identified additional criteria which highlight Agency concerns not addressed by section 4(c). Therefore, EPA also used the following criteria in identifying active ingredients for inclusion in List B:

1. Active ingredients currently in Special Review [13].

2. Active ingredients whose use is restricted to certified applicators [8].

3. Active ingredients of concern because of potential dibenzodioxin or dibenzofuran contamination. These active ingredients were the subject of special Data Call-In notices issued in June and October 1987 [8].

4. Active ingredients of concern for possible effects on non-target or endangered species, drawn from PR Notices 87–4 and 87–5 issued in May 1987 and Agency scientific determinations [23].

The effect of applying additional criteria is to advance certain chemicals onto List B which might otherwise have been included on either List C or List D, thereby requiring earlier Phase II, III and IV responses.

Because each criterion used to create List B is broadly applicable to a large number of active ingredients, there is substantial overlap of the criteria. Many active ingredients on List B meet more than one criterion. For the same reason, the pool of candidates for List B exceeded the cutoff of 150 active ingredient cases established by the Act. The 149 active ingredient cases currently contained on List B include 229 individual chemicals. Remaining active ingredients meeting the criteria will be included on Lists C and D.

It should be emphasized that a number of active ingredients that meet the criteria are already the subject of a Registration Standard, and therefore appear on List A and not on List B. The priorities for listing in FIFRA section 4 do not apply to List A chemicals.

D. Format of List B

List B includes 149 active ingredient cases, some of which are single active ingredients, and others of which are groups of active ingredients. The following information is given for each active ingredient case:

1. The name of the active ingredient or case. The name is one of the following: (a) The accepted common name of a single active ingredient; (b) the chemical name of the single activie ingredient, if brief; (c) a case name descriptive of the members of the case as a whole; or (d) in a few instances, a trade name used because the common and chemical names were too long to include efficiently. In this last case, the trade name is identified in the listing with an asterisk.

2. The number of the active ingredient case. This is an internal reference number identifying the active ingredient case.

3. The Chemical Abstracts Service (CAS) number of each individual chemical included in List B. In a few cases, CAS numbers have not been assigned and so are not given.

4. The acceptable common name (or chemical name if there is no acceptabie common name) of each individual chemical included within each case.

BILLING CODE 6560-50-M

ACTIVE INGREDIENTS, LIST B

Case Name	Case	CAS No.	Chemical/Common Name
Acrolein	2005	107-02-8	Acrolein
Ametryn	2010	834-12-8	2-(Ethylamino)-4-(isopropylamino)-6-(methylthio)-s-triazine
Aminocarb	2015	2032-59-9	4-(Dimethylamino)-m-tolyl methylcarbamate
Arsenates and arsenites	2020	7778-44-1	Calcium arsenate
		7784-46-5	Sodium arsenite
Barban	2025	101-27-9	4- Chloro-2-butynyl meta-chlorocarbanilate
Benfluralin	2030	1861-40-1	N- Butyl-N-ethyl-a,a,a-trifluoro-2,6-dinitro-p-toluidine
Bensulide	2035	741-58-2	S-(O,O- Diisopropyl phosphorodithioate) ester of N-(2-Mercaptoethyl)benzenesulfonamide
N6-Benzyladenine	2040	1214-39-7	N-(Phenylmethyl)-1H-purin-6-amine
o-Benzyl-p-chlorophenol, and salts	2045	120-32-1	2- Benzyl-4-chlorophenol
		35471-49-9	Potassium 2-benzyl-4-chlorophenate
		3184-65-4	Sodium 2-benzyl-4-chlorophenate
Biphenyl	2050	92-52-4	Biphenyl
Bis(trichloromethyl)sulfone	2055	3064-70-8	Bis(trichloromethyl)sulfone
Bomyl	2060	122-10-1	Dimethyl 3-hydroxyglutaconate dimethyl phosphate
Brodifacoum	2755	56073-10-0	3-(3-(4'- Bromo-(1,1'-biphenyl)-4-yl)-1,2,3,4-tetrahydro-1-napthalenyl)-4-hydroxycoumarin
Bromadiolone	2760	28772-56-7	3-(3-(4'- Bromo-(1,1'-biphenyl)-4-yl)-3-hydroxy-1-phenylpropyl)-4-hydroxycoumarin
Bromethalin	2765	63333-35-7	N-Methyl-2,4-dinitro-N-(2,4,6-tribromophenyl)-6-(trifluoromethyl)benzenamine
Bromonitrostyrene	2065	7166-19-0	beta- Bromo-beta-nitrostyrene
Bromoxynil, and esters	2070	1689-84-5	3,5- Dibromo-4-hydroxybenzonitrile
		3861-41-4	Bromoxynil butyrate
			Bromoxynil heptanoate
		1689-99-2	Bromoxynil octanoate
Bronopol	2770	52-51-7	2- Bromo-2-nitropropane-1,3-diol
Butralin	2075	33629-47-9	4-(1,1- Dimethylethyl)-N-(1-methylpropyl)-2,6-dinitrobenzeneamine
Cacodylic acid, and salts	2080	75-60-5	Cacodylic acid
		124-65-2	Sodium cacodylate
Cadmium chloride	2085	10108-64-2	Cadmium chloride
Chlorfenvinphos	2090	470-90-6	2- Chloro-1-(2,4-dichlorophenyl)vinyl diethyl phosphate
Chlorflurenol, methyl ester	2095	2536-31-4	Methyl 2-chloro-9-hydroxyfluorene-9-carboxylate
Chlorophacinone	2100	3691-35-8	2-((p- Chlorophenyl)phenylacetyl)-1,3-indandione
Cloprop, salts and amide	2110	101-10-0	2-(m- Chlorophenoxy)propionic acid
		53404-22-1	2-(m- Chlorophenoxy)propionic acid, sodium salt
		5825-87-6	2-(m- Chlorophenoxy)propionamide
4-CPA, and salts	2115	122-88-3	4- Chlorophenoxyacetic acid
		53404-23-2	Diethanolamine 4-chlorophenoxyacetate

Crotoxyphos	2120	7700-17-6		Dimethylphosphate ester of alpha-methylbenzyl-3-hydroxy-cis-crotonate
Cycloate	2125	1134-23-2	S-	Ethyl N-ethylcyclohexanecarbamothioate
Cypermethrin	2130	52315-07-8	alpha-	Cyano(3-phenoxyphenyl)methyl (+-)cis,trans-3-(2,2-dichlorovinyl)-2,2-dimethylcyclopropanecarboxylate
Cythioate	2775	115-93-5	O,O-	Dimethyl O-p-sulfamoylphenyl phosphorothioate
Dazomet, and salts	2135	533-74-4		Tetrahydro-3,5-dimethyl-2H-1,3,5-thiadiazine-2-thione
		53404-60-7		Sodium tetrahydro-3,5-dimethyl-2H-1,3,5-thiadiazine-2-thione
DDT	2140	50-29-3		Dichlorodiphenyl trichloroethane
DEF (*)	2145	78-48-8	S,S,S-	Tributyl phosphorotrithioate
Desmidipham	2150	13684-56-5		Ethyl meta-hydroxycarbanilate carbanilate
Diamidofos	2155	1754-58-1		Phenyl N,N'-dimethylphosphorodiamidate
Dibromodicyanobutane	2780	35691-65-7	1-	Bromo-1-(bromomethyl)-1,3-propanedicarbonitrile
Dicapthon	2785	2463-84-5	O-(2-	Chloro-4-nitrophenyl) O,O-dimethyl phosphorothioate
Diclofop-methyl	2160	51338-27-3		Methyl 2-(4-(2,4-dichlorophenoxy)phenoxy)propionate
Dichlorophenylphenol, and salts	2165	5335-24-0	4,6-	Dichloro-2-phenylphenol
		53404-30-1		Potassium 4,6-dichloro-2-phenylphenate
Diethatyl ethyl	2170	38727-55-8	N-	Chloroacetyl-N-(2,6-diethylphenyl)glycine, ethyl ester
Dimethyldithiocarbamate salts	2180	14484-64-1		Ferric dimethyldithiocarbamate
		128-03-0		Potassium dimethyldithiocarbamate
		128-04-1		Sodium dimethyldithiocarbamate
		137-30-4		Zinc dimethyldithiocarbamate
		16509-79-8		Ziram - cyclohexylamine complex
Dinitramine	2185	29091-05-2	N3,N3-	Diethyl-2,4-dinitro-6-(trifluoromethyl)-1,3-benzenediamine
4,6-Dintro-o-cresol, and salts	2190	534-52-1	4,6-	Dinitro-o-cresol
		2312-76-7		Sodium 4,6-dinitro-o-cresylate
Dinitrophenol	2195	51-28-5	2,4-	Dinitrophenol
Dinocap, and its components	2200	39300-45-3		Mixed dinitrooctylphenylcrotonates and dinitrooctylphenols
		49794-90-3	2,4-	Dinitro-6-octylphenyl crotonate
		49794-91-4	2,6-	Dinitro-4-octylphenyl crotonate
		37224-61-6		Isooctyldinitrophenol, isomer unspecified
Diphacinone, and salts	2205	82-66-6	2-(	Diphenylacetyl)-1,3-indandione
		42721-99-3		Sodium diphacinone
Diphenylamine	2210	122-39-4		Diphenylamine
Dipropyl isocinchomeronate	2215	136-45-8		Di-n-propyl isocinchomeronate
Ditalimfos	2790	5131-24-8	O,O-	Diethyl (1,3-dihydro-1,3-dioxo-2H-isoindol-2-yl) phosphonothioate
Dodemorph, and salts	2225	1593-77-7	4-	Cyclododecyl-2,6-dimethylmorpholine
		31717-87-0	4-	Cyclododecyl-2,6-dimethylmorpholine acetate
		59145-63-0	4-	Cyclododecyl-2,6-dimethylmorpholine benzoate
Dowacil-A40 (*)	2230	38827-35-9	2,3,5-	Trichloro-4-(propylsulfonyl)pyridine
		85847-73-0	2,3-	Dichloro-4-(propylsulfonyl)pyridine

Duraset (*)	2795	85-72-3	N-meta-	Tolyl)phthalamic acid
EDB	2235	75-09-2		Ethylene dibromide
EDC	2240	107-06-2		Ethylene dichloride
Endothall, and salts	2245	145-73-3	7-	Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid
				Mono[N,N-dimethyl(coco alkyl)amine] endothall
		2164-07-0		Dipotassium endothall
		129-67-9		Disodium endothall
Endrin	2250	72-20-8		Hexachloroepoxyoctahydro-endo,endo-dimethano napthalene
Ethalfluralin	2260	55283-68-6	N-	Ethyl-N-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl)benzenamine
Ethofumesate	2265	26225-79-6	2-	Ethoxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl methanesulfonate
Ethylan	2270	72-56-0	1,1-	Dichloro-2,2-bis(p-ethylphenyl)ethane
Ethylene oxide	2275	75-21-8		Ethylene oxide
Fenvalerate	2280	51630-58-1	alpha-	Cyano-(3-phenoxyphenyl)methyl 4-chloro-alpha-(1-methylethyl)benzeneacetate
Fluazifop butyl, isomers	2285	69806-50-4		Butyl (RS)-2-(4-((5-(trifluoromethyl)-2-pyridinyl) oxy)phenoxy)propanoate
		79241-46-6		Butyl (R)-2-(4-((5-(trifluoromethyl)-2-pyridinyl) oxy)phenoxy)propanoate
Flucythrinate	2290	70124-77-5	(+-)-	Cyano-(3-phenoxyphenyl)methyl (+)-4-(difluoro methoxy)-alpha-(1-methylethyl)benzeneacetate
Fluvalinate	2295	69409-94-5	N-[2-	Chloro-4-(trifluoromethyl)phenyl]-DL-valine, (+-)-cyano(3-phenoxyphenyl)methyl ester
Fosamine ammonium	2355	25954-13-6		Ammonium ethyl carbamoylphosphonate
Fospirate	2300	5598-52-7	O,O-	Dimethyl O-(3,5,6-trichloro-2-pyridyl) phosphate
Furfural	2305	98-01-1		Furfural
Glutaraldehyde	2315	111-30-8		Glutaraldehyde
Hexachlorophene, and salts	2320	70-30-4	2,2'-	Methylenebis(3,4,6-trichlorophenol)
		5736-15-2		Monosodium 2,2'-methylenebis(3,4,6-trichloro phenate)
Imazalil	2325	35554-44-0	1-(2-(2,4-	Dichlorophenyl)-2-(2-propenyloxy)ethyl)-1H-imidazole
Indole-3-butyric acid	2330	133-32-4		Indole-3-butyric acid
Iprodione	2335	36734-19-7	3-(3,5-	Dichlorophenyl)-N-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide
Irgasan (*)	2340	3380-34-5	5-	Chloro-2-(2,4-dichlorophenoxy)phenol
Isofenphos	2345	25311-71-1		Isopropylsalicylate, O-ester with O-ethyl isopropylphosphoramidothioate
Lead arsenate	2360	7784-40-9		Lead arsenate
MCPB, and salts	2365	94-81-5	4-(2-	Methyl-4-chlorophenoxy)butyric acid
		6062-26-6		Sodium 4-(2-methyl-4-chlorophenoxy)butyrate
Mefluidide, and salts	2370	53780-34-0	N-(2,4-	Dimethyl-5-(((trifluoromethyl)sulfonyl)amino) phenyl)acetamide
		53780-36-2		Diethanolamine mefluidide
		83601-83-6		Mefluidide, potassium salt
Mepiquat chloride	2375	24307-26-4	N,N-	Dimethylpiperidinium chloride

2-Mercaptobenzothiazole, and salts	2380	149-30-4 2492-26-4 155-04-4	2- Mercaptobenzothiazole Sodium 2-mercaptobenzothiazolate Zinc 2-mercaptobenzothiazolate
Merphos	2385	150-50-5	Tributyl phosphorotrithioite
Methyldithiocarbamate, salts	2390	137-41-7 137-42-8	Potassium N-methyldithiocarbamate Sodium N-methyldithiocarbamate
Methanearsonic acid, salts	2395	5902-95-4 144-21-8 53404-47-0 2163-80-6 6379-37-9	Calcium methanearsonate Disodium methanearsonate Dodecylammonium methanearsonate Monosodium methanearsonate Octylammonium methanearsonate
Methazole	2400	20354-26-1	2-(3,4- Dichlorophenyl)-4-methyl-1,2,4-oxadiazolidine-3,5-dione
Methyl isothiocyanate	2405	556-61-6	Methyl isothiocyanate
Methylene bis(thiocyanate)	2415	6317-18-6	Methylene bis(thiocyanate)
Mexacarbate	2425	315-18-4	4-(Dimethylamino)-3,5-xylyl methylcarbamate
MGK-264 (*)	2430	113-48-4	N- Octyl bicycloheptenedicarboximide
Molinate	2435	2212-67-1	S- Ethyl hexahydro-1H-azepine-1-carbothioate
MV-678 (*)	2440	53905-38-7	1-(8- Methoxy-4,8-dimethylnonyl)-4-(1-methylethyl) benzene
(b-Napthyloxy)acetic acid	2445	120-23-0	(2- Naphthyloxy)acetic acid
Napropamide	2450	15299-99-7	N,N- Diethyl-2-(1-naphthalenyloxy)propionamide
Niclosamide	2455	1420-04-8	2- Aminoethanol salt of 2',5-dichloro-4'-nitrosalicyanalide
Nicotine, and derivs	2460	54-11-5 65-30-5 84961-66-0	Nicotine Nicotine sulfate Tobacco dust
4-Nitrophenol	2465	100-02-7	4- Nitrophenol
Octhilinone	2475	26530-20-1	2-n- Octyl-4-isothiazolin-3-one
Omadine salts	2480	33079-08-2 13463-41-7	tert- Butylamine 2-pyridinethiol-1-oxide Zinc 2-pyridinethiol-1-oxide
Oxadiazon	2485	19666-30-9	2-tert- Butyl-4-(2,4-dichloro-5-isopropoxyphenyl)-delta2 -1,3,4-oxadiazoline-5-one
Oxyfluorfen	2490	42874-03-3	2- Chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoro methyl)benzene
Oxythioquinox	2495	2439-01-2	6- Methyl-2,3-quinoxalinedithiol cyclic S,S-dithiocarbonate
Pebulate	2500	1114-71-2	S- Propyl butylethylthiocarbamate
Pentachlorophenol, salts and esters	2505	87-86-5 3772-94-9 7978-73-6 131-52-2	Pentachlorophenol Pentachlorophenyl laurate Potassium pentachlorophenate Sodium pentachlorophenate
Permethrin	2510	52645-53-1	(3- Phenoxyphenyl)methyl (+-)cis,trans-3-(2,2-dichloro ethenyl)-2,2-dimethylcyclopropanecarboxylate
Phenothiazine	2515	262-20-4	10H- Phenothiazine
Phenthoate	2800	2597-03-7	Ethyl alpha-((dimethoxyphosphinothioyl)thio) benzeneacetate

Phenylmercury salts	2805	27236-65-3	Di(phenylmercury) dodecenylsuccinate
		62-38-4	Phenylmercuric acetate
		53404-67-4	Phenylmercuric ammonium acetate
		122-64-5	Phenylmercuric lactate
		55-68-5	Phenylmercuric nitrate
		23319-66-6	Phenylmercuric triethanolammonium lactate
		104-60-9	Phenylmercuric oleate
		53404-68-5	Phenylmercuric ammonium propionate
Phosacetim	2520	4104-14-7	O,O- Bis(p-chlorophenyl) acetimidoylphosphoramido thioate
Piperonyl butoxide	2525	51-03-6	(Butylcarbityl)(6-propylpiperonyl)ether
Pirimiphos-ethyl	2530	23505-41-1	O-[2-(Diethylamino)-6-methyl-4-pyrimidinyl] O,O-diethyl phosphorothioate
Pirimiphos-methyl	2535	29232-93-7	O-[2-(Diethylamino)-6-methyl-4-pyrimidinyl] O,O-dimethyl phosphorothioate
Pival (*), and salts	2810	83-26-1	2- Pivalyl-1,3-indandione
		6120-20-3	Sodium 2-pivalyl-1,3-indandione
Profenofos	2540	41198-08-7	O-(4- Bromo-2-chlorophenyl) O-ethyl S-propyl phosphorothioate
Prometon	2545	1610-18-0	2,4- Bis(isopropylamino)-6-methoxy-s-triazine
Propetamphos	2550	31218-83-4	1- Methylethyl (E)-3-(((ethylamino)methoxyphosphino thioyl)oxy)-2-butanoate
Propoxur	2555	114-26-1	o- Isopropoxyphenyl methylcarbamate
Propylene oxide	2560	75-56-9	Propylene oxide
n-Propyl isome	2565	83-59-0	Di-n-propylmaleate isosafrole condensate
Pyrazon	2570	1698-60-8	5- Amino-4-chloro-2-phenyl-3(2H)-pyridazinone
2-Phenylphenol, and salts	2575	90-43-7	2- Phenylphenol
		52704-98-0	Ammonium 2-phenylphenate
		13707-65-8	Potassium 2-phenylphenate
		132-27-4	Sodium 2-phenylphenate
Pyrethrin, and derivs	2580	121-21-1	Pyrethrin I
			Pyrethrin coils
		8003-34-7	Pyrethrum powder other than pyrethrins
Pyrimidinone	2585	67485-29-4	(Tetrahydro-5,5-dimethyl-2(1H)-pyrimidinone) (1,5-bis(a,a,a-trifluoro-p-tolyl)-1,4-pentadien-3-one) hydrazone
Ronnel	2590	299-84-3	O,O- Dimethyl O-(2,4,5-trichlorophenyl) phosphoro thioate
Ryanodine, and derivs	2595	15662-33-6	Ryanodine
			Ryania speciosa, powdered stems of
Sethoxydim	2600	74051-80-2	2-(1-(Ethoxyimino)butyl)-5-(2-(ethylthio)propyl)-3-hydroxy-2-cyclohexen-1-one
Sodium acifluorfen	2605	62476-59-9	5-(2- Chloro-4-(trifluoromethyl)phenoxy)-2-nitrobenzoic acid, sodium salt
Starlicide (*)	2610	7745-89-3	3- Chloro-p-toluidine hydrochloride
TBT-containing compounds	2620	56-35-9	Bis(tributyltin) oxide
		22330-14-9	Bis(tributyltin) salicylate
		4419-22-1	Bis(tributyltin) sulfosalicylate
		56-36-0	Tributyltin acetate
		4342-36-3	Tributyltin benzoate
		56573-85-4	Tributyltin chloride complex of ethylene oxide condensate of abietylamine
		24124-25-2	Tributyltin linoleate
		53466-85-6	Tributyltin monopropyleneglycol maleate

		28801-69-6		Tributyltin neodecanoate
				Tributyltin resinate
		53404-82-3		Tributyltin isopropyl succinate
		7437-35-6		Bis(tributyltin) adipate
		14275-57-1		Tributyltin maleate
		2155-70-6		Tributyltin methacrylate
		13331-52-7		Tributyltin acrylate
		1461-22-9		Tributyltin chloride
		1983-10-4		Tributyltin fluoride
TCMB	2625	21564-17-0	2-(	Thiocyanomethylthio)benzothiazole
TCNB	2630	117-18-0	1,2,4,5-	Tetrachloro-3-nitrobenzene
Terbucarb	2640	1918-11-2	2,6-	Di-tert-butyl-p-tolyl methylcarbamate
Terbuthylazine	2645	5915-41-3	2-(tert-	Butylamino)-4-chloro-6-(ethylamino)-s-triazine
Tetradifon	2655	116-29-0	4-	Chlorophenyl 2,4,5-trichlorophenyl sulfone
Tetramethrin	2660	7696-12-0	(1-	Cyclohexene-1,2,-dicarboximido)methyl 2,2-dimethyl -3-(2-methylpropenyl)cyclopropanecarboxylate
Thiobencarb	2665	28249-77-6	S-((4-	Chlorophenyl)methyl) diethylcarbamothioate
Thiabendazole, and salts	2670	148-79-8	2-(4-	Thiazolyl)benzimidazole
		28558-32-9	2-(4-	Thiazolyl)benzimidazole, hypophosphite salt
Thiodicarb	2675	59669-26-0		Dimethyl N,N'-(thiobis((methylimino)carbonyloxy)) bis(ethanimidothioate)
Thiophanate-methyl	2680	23564-05-8		Dimethyl ((1,2-phenylene)bis(iminocarbonothioyl)) bis(carbamate)
Toxaphene	2685	8001-35-2		Technical chlorinated camphene
TPTF	2690	379-52-2		Triphenyltin fluoride
Triallate	2695	2303-17-5	S-(2,3,3-	Trichloroallyl) diisopropylthiocarbamate
Triadimefon	2700	43121-43-3	1-(4-	Chlorophenoxy)-3,3-dimethyl-1-(1H-1,2,4-triazol -1-yl)-2-butanone
Triclopyr, salts and esters	2710	55335-06-3	3,5,6-	Trichloro-2-pyridinyloxyacetic acid
		64700-56-7		Butoxyethyl triclopyr
		57213-69-1		Triethylammonium triclopyr
2,4,5-Trichlorophenol, and salts	2815	95-95-4	2,4,5-	Trichlorophenol
		136-32-3		Sodium 2,4,5-trichlorophenate
Triforine	2720	26644-46-2	N,N'-(1,4-	Piperazinediyl-bis(2,2,2-trichloroethylidine)) bis(formamide)
Troysan CMP Acetate (*)	2820	1319-86-4		Acetato(chloromethoxypropyl)mercury
Troysan KK-108A (*)	2725	55406-53-6	3-	Iodo-2-propynyl butylcarbamate
Valone (*), and salts	2825	83-28-3	2-	Isovaleryl-1,3-indandione
		23710-76-1		Calcium 2-isovaleryl-1,3-indandione
Vernolate	2735	1929-77-7	S-	Propyl dipropylthiocarbamate
Vinclozolin	2740	50471-44-8	3-(3,5-	Dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione
Zineb	2750	12122-67-7		Zinc ethylenebisdithiocarbamate

* Trademark

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IV. Significance of Inclusion on List B

Active ingredient cases included on List B are subject to FIFRA sections 4(d), 4(e), 4(f) and 4(g) (Phases II, III, IV, and V) of the accelerated reregistration scheme.

The publication of List B is required by FIFRA section 4(c). Publication itself does not affect the registration status of any currently registered pesticide product. However, the Act establishes the publication date of List B as the determinant of the dates for completion of certain activities in Phases II, III, and IV, including:

A. A 90-day response period for Phase II, during which each registrant of a product containing an active ingredient on List B must respond to the Agency in accordance with FIFRA section 4(d). Registrants will be sent by certified mail specific instructions and guidance on how to respond.

B. A 1-year submission period for Phase III, during which registrants who have indicated in Phase II that they are relying on adequate data previously submitted to the Agency are required to summarize and reformat those data in accordance with guidance from the Agency.

C. An 18-month period for Phase IV, during which the Agency must evaluate Phase II and III submissions, independently determine remaining data requirements for each active ingredient, publish in the **Federal Register** a notice of outstanding data requirements, and notify registrants under FIFRA section 3(c)(2)(B) of any additional requirements.

In addition, fees are to be collected for each List B active ingredient in accordance with FIFRA section 4(i)(2). The Agency has determined that, for the purpose of reregistration fees, the term "active ingredient" refers to the chemical (or group of chemicals) associated with a single active ingredient case. In List B, individual active ingredient cases which are deemed to be "active ingredients" for fee purposes are listed in the first column.

Fees for active ingredients are to be allocated among registrants according to market share over the 1986–88 period, in accordance with FIFRA section 4(i)(7). On April 19, 1989, the Agency requested the submission of market share information from registrants; this information will form the basis for allocation of reregistration fees. Registrants will be notified separately of the fees that must be paid and the due dates for fee payment.

V. Paperwork Reduction Act

The Agency will be sending instructions to registrants having pesticide products containing active ingredients on List B, explaining how they must respond during Phase II.

The information collection requirements contained in those instructions (and triggered by this notice) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2070–0102.

Public reporting burden for this collection of information is estimated to vary from 10 to 42 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Management and Budget, Paperwork Reduction Project (2070–0102), Washington, DC 20503.

Dated: May 22, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89–12572 Filed 5–24–89; 8:45 am]

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federal register

Thursday
May 25, 1989

Part V

Department of Transportation

Urban Mass Transportation Administration

49 CFR Part 665

Bus Testing; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 665

[Docket No. 89-B]

RIN 2132-AA30

Bus Testing

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 317 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 provides that no funds appropriated or made available under the Urban Mass Transportation Act of 1964, as amended, may be obligated or expended for the acquisition of a new model bus after September 30, 1989, unless a bus of such model has been tested at a facility to be established in Altoona, Pennsylvania. The purpose of the testing is not to set a standard or grade the performance of the buses, but to provide performance information to the transit authorities that can be used in their purchase or lease decision. The facility is to be operated by a contractor chosen by UMTA, and the operator is to establish and collect fees for the testing of vehicles at the facility. This notice seeks comment on this proposed rule to implement this new statutory provision.

DATES: Comments should be received by July 24, 1989. UMTA will issue guidance on any transition period procedures within three weeks of the close of the comment period, that is to say by August 14, 1989.

ADDRESS: Comments should be addressed to: Department of Transportation, Urban Mass Transportation Administration, Office of Chief Counsel, Docket No. 89-B, 400 Seventh Street, SW., Room 9316, Washington, DC 20590. Comments will be available for review by the public at this address from 9:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Steven A. Barsony, Director, Office of Engineering Evaluations, Office of Technical Assistance and Safety, (202) 366-0090, or, for legal issues, Daniel Duff, Assistant Chief Counsel, (202) 366-4011.

SUPPLEMENTARY INFORMATION:

A. Background

Section 317 of the Surface Transportation and Uniform Relocation Assistance Act, Pub. L. 100-17 (STURAA), directs the Secretary of Transportation to establish a bus testing facility at Altoona, Pennsylvania. This responsibility has been delegated to the Urban Mass Transportation Administration (UMTA).

STURAA provides that, after September 30, 1989, no funds obligated by UMTA or expended by an UMTA recipient may be used to purchase a "new bus model", unless a bus of such model has been tested at the Altoona facility. The facility will be operated under contract with UMTA. The operator must establish fees for the vehicle testing, which are approved by UMTA and collected by the operator. Section 317 further specifies that each vehicle is to be tested for maintainability, reliability, safety, performance, structural integrity, fuel economy, and noise. The purpose of the testing is not to set a standard or grade the performance of the buses, but to provide performance information to the transit authorities that can be used in their purchase or lease decisions. (Although not a part of this rulemaking, we note that this facility, when operational, will be available to all manufacturers for the whole range of tests described in this NPRM. Thus, it is possible for a manufacturer of an "old" model bus to use the resources of this facility, even though the manufacturer's bus model is not required to be tested under the provisions of this program.)

The statute defines the term "new model bus" as "* * * a bus model which has not been used in mass transportation service in the United States before the date of production of such model or a bus model which has been used in such service but which is being produced with a major change in configuration or components."

The Conference Report accompanying the 1987 STURAA states that guidelines on the bus testing facility "* * * shall be promulgated through the formal regulatory process." In developing this rule, the agency met with industry and grantee groups. Minutes of these meetings as well as two Reports on the agency's options regarding the implementation of this rule are part of the docket of this rule, and are available for public inspection at the place and during the hours noted in the **"ADDRESS"** section of this preamble.

This NPRM proposes one way to implement this statutory directive, and requests comment from interested persons on several specific provisions of the proposal. The agency recognizes that for many of the proposed provisions there are a variety of options available. This proposal reflects the agency's tentative decision for each provision. Where there is a broad range of alternatives for a specific issue the agency has flagged the area particularly for public comment. The key provisions of the proposed rule are discussed in some detail in the following section of this preamble.

B. The Proposed Regulation

1. Key Issues

This section discusses and analyzes some of the key issues under the NPRM. These are issues on which UMTA particularly seeks comment. In addition, each of the regulatory provisions is summarized in the next section ("Section-By-Section Analysis").

• *Definition of "Bus."* One of the most significant threshold questions is what type or types of vehicle should be tested at the facility, that is, what is the definition of "bus". The rule's scope could include only the typical standard-size 35-40 foot bus, and similar vehicles, or it could encompass essentially every vehicle funded by UMTA which is used in mass transportation service. (Mass transportation service is defined as the operation of a vehicle, which provides general or special service to the public, on a regular and continuing basis.)

In considering how to define bus, UMTA examined the basic definition of "bus" used by two other Federal agencies in the Department of Transportation. The National Highway Traffic Safety Administration's Federal Motor Vehicle Safety Standards, for example, define "bus" as "* * * a motor vehicle with motive power, except a trailer, designed for carrying more than 10 persons." The Federal Highway Administration Federal Motor Carrier Safety Regulations define "bus" as "* * * any motor vehicle designed, constructed, and used for the transportation of passengers, including taxicabs" and also limits this definition under the statutory definition of commercial motor vehicles to vehicles designed to carry more than 15 passengers, including the driver.

Another consideration in developing the definition of bus concerns small transit authorities and uniquely designed vehicles. For example, many small and rural operators have expressed concern about the fitness of vans and other smaller vehicles for mass transportation purposes. Similar questions have been raised at congressional oversight hearings on UMTA's rural program. On the other hand, the potential exists for the testing requirement to impose a significant burden on the very small "manufacturer"—the businessperson who custom alters vehicles for transit

authorities to meet specific paratransit needs, for example. Small volume operations do not have the same kind of overhead flexibility that large bus manufacturers do.

In light of the broad definition of "bus" adopted by agencies of the Department, and additional ongoing durability and reliability concerns about smaller vehicles, UMTA in this NPRM has adopted a definition of bus that would require virtually *any* new model of a vehicle to be used in mass transportation revenue service and purchased with UMTA funds to be first tested at the bus testing facility. Thus, any new model of a vehicle from the smallest-sized van to the largest heavy-duty articulated transit bus would have to be tested at the bus testing facility if it is purchased or leased with UMTA funds obligated or expended after September 30, 1989.

The STURAA also provides that any major change in configuration or components made to an existing model would require such modified vehicle to be tested at the facility before it could be purchased or leased with UMTA funds. Examples of changes in configuration or components are provided in the definitions section of the proposed rule and include such things as changes in the design or configuration of the propulsion system, changes in the fuel or energy source, and changes involving structural modifications. In this connection, we believe that what is known in the industry as a remanufactured bus probably would trigger the requirements for bus testing, while a rehabilitated bus probably would not. (A remanufacturing generally involves an overhaul of a vehicle while a rehabilitation generally involves a refurbishing or upgrading of a vehicle.) The agency specifically requests comments on what specific types of changes should be considered a "major change in configuration or components" for purposes of this rule.

It is important to note that the vehicles proposed to be covered by this regulation are revenue (passenger-carrying) vehicles that are placed in mass transit service by a grantee. The regulation would not apply to vehicles that provide support functions such as service cars, tow trucks and the like.

The agency also seeks comment on whether significant changes in personnel working on a particular bus model is an event that would trigger the requirements of this regulation and require a bus model manufactured by such new personnel to be considered a "new bus model."

While the NPRM thus proposes to cover all vehicles regardless of size, UMTA recognizes that there is a significant difference between the relative size of firms engaged in the manufacture and sale of heavy duty transit buses, and final stage manufacturers of small paratransit vehicles. Final stage manufacturing involving vans for use in elderly and handicapped service, for example, may only require limited modification to raise the roof or add a wheelchair lift. UMTA anticipates that many small final stage manufacturers of such vehicles have a very limited annual production volume. In this connection, UMTA requests public comment on the pros and cons of establishing annual volume production thresholds below which no testing under this regulation would be required, types of vehicles such thresholds would apply to, and what thresholds might be employed. UMTA also seeks comments on whether there should be other bases that would constitute appropriate grounds for exemption from the requirements of this rule—either on grounds of undue hardship on the manufacturer, or duplication of testing, etc.

• *New Bus Model Covered by the NPRM.* The law provides that UMTA funds may not be obligated or expended after September 30, 1989, for the acquisition of a new bus model unless a model of such bus has been tested at the bus testing facility. The law also defines a "new bus model" as "a bus model which has not been used in mass transportation service in the United States before the date of production of such model or a bus model which has been used in such service but which is being produced with a major change in configuration or components." (The scope of the definition was discussed in the previous section of this preamble). However, the law does not state *when* a bus is a new model for purposes of the provision.

On the one hand, it could be argued that only a new bus model introduced after September 30, 1989, would be subject to the bus testing provision, since it is after the date that UMTA funds may not be obligated or expended on the acquisition of a new bus model that has not been tested at the bus testing facility. On the other hand, the drafters of the legislation may have meant to have the provision apply to any new bus model introduced after the 1987 STURAA was enacted into law, April 2, 1987. Choosing such a date would preclude manufacturers from trying to rush a new bus model into production before some later effective date.

UMTA is proposing tentatively to establish April 2, 1987, as the effective date for a new bus model to be covered by the regulation. We recognize that this is the broadest possible approach that could be taken, and could mean that some vehicles to be tested already will have been in mass transportation service for a period of time. In the alternative, should the regulation only apply to a new bus model introduced after September 30, 1989, or some date in between? The agency seeks comments on this provision.

It is important to note that only new bus models purchased with UMTA funds obligated or expended after September 30, 1989, are subject to this regulation, and this issue is discussed in more detail below.

• *Funds "obligated or expended" after September 30, 1989.* The bus testing provision provides that "[n]o funds appropriated or made available pursuant to this Act after September 30, 1989, may be obligated or expended for the acquisition of a new bus model unless a bus of such model has been tested at * * *" the Altoona facility.

The "obligation" of funds is the formal action by UMTA that signifies when Federal funds are available for a particular project and may be drawn down by a recipient. Each grant agreement entered into by UMTA and a recipient specifically states the "obligation date" of Federal funds. Thus, any funds obligated by UMTA after September 30, 1989, will be subject to this regulation, and a recipient readily knows on the basis of the UMTA grant agreement when UMTA funds are obligated.

The provision, however, also provides that it applies to any funds "expended" after September 30, 1989. Since the provision covers the obligation of funds, a Federal action, this expenditure language appears clearly to have been meant to apply to an action by a recipient.

We recognize that this could lead to situations in which, for example, half of a fifty bus order involving a new bus model would have been paid for in the summer of 1989, and thus not subject to this regulation, while the other half of the buses are not delivered until after September 30, 1989, in which case a bus of the model to be purchased would first have to have been tested at the facility before the recipient could expend UMTA funds to complete the bus purchase order.

In other regulations affecting procurement matters, UMTA generally has had any new requirements apply to funds obligated by UMTA after the rule's effective date, or to procurements initiated after that date so that the new

requirements do not affect or interrupt ongoing procurements. In this case, however, the statute specifically states that it applies to any expenditure of funds by a recipient after September 30, 1989, and would appear to preclude the possibility of applying the regulation only to procurements initiated after that date. Recipients should be particularly aware of this provision in any procurements that may involve the purchase of a new bus model and the expenditure of UMTA funds after September 30, 1989. We seek specific comment on the implementation of this aspect of the requirement.

• *"Acquisition" of a New Bus Model.* The statute provides that UMTA funds may not be used for the "acquisition" of a new bus model unless it first has been tested at the facility. We propose acquisition to include either purchase or *lease* of a bus, since in either case UMTA funds are being used to "acquire" a bus. In connection with leasing, the regulation should be easy to administer when a grantee leases a vehicle itself since the grantee can require that any leased buses comply with this regulation.

While the statute was intended, presumably, to cover any lease or purchase involving UMTA funds, the agency sees potential compliance problems when a grantee leases services to be provided by, for example, a private operator. If the agency were to adopt a broad approach, it could require that vehicles used by a private company under service contract with the recipient comply with the provisions of this regulation. In such cases, can the grantee require the private operator's vehicles to be in compliance with this regulation? On the other hand, if the agency were to construe the program more narrowly, it could determine that only those vehicles under the direct control of the recipient (owned or leased by the recipient) would be covered. We seek comment on whether a lease for service with a private operator is appropriately included in the coverage of this regulation.

• *Certifications.* In order to minimize the administrative burdens associated with this regulation, UMTA proposes to require that a recipient certify compliance with the regulation. In this regard, the operator of the facility will provide the manufacturer or entity having the test conducted with a Test Report upon completion of all testing at the facility. The entity in turn can provide this Test Report to the purchaser of the bus, and in so doing certify that the bus to be purchased is the same model as the new bus model subject to the Test Report from the bus testing facility.

Recognizing that some minor changes may be made to a vehicle, the NPRM provides that the manufacturer's certification also should describe any changes that have been made to the vehicle since the new bus model was tested at the bus testing facility, along with an explanation of why it believes these changes are not major and therefore do not require new testing at the facility. If a recipient or a manufacturer is not certain whether a particular change is "major," UMTA on a case-by-case basis will so decide.

These certification procedures are designed to strike a balance between administrative burden and adequate assurance of compliance with the provisions. The fact that a failure to comply with the certification process required by the final regulation may trigger criminal sanctions should prove adequate to assure compliance with the provisions. However, UMTA specifically seeks comment on whether something beyond this certification process is necessary to ensure compliance by manufacturers with these provisions.

The recipient certification generally would be made in any application to UMTA for the purchase of buses. If a recipient does not have such an application before UMTA, and is to expend UMTA funds after September 30, 1989, for the purchase of a new bus model, the recipient would have to make the certification directly to UMTA before it can acquire such a bus.

• *Testing Requirements.* In accordance with section 317 of STURAA, the agency proposes that each new bus model be tested for maintainability, reliability, safety, performance, structural integrity, fuel economy, and noise. (The specific tests are discussed in greater detail in the section-by-section analysis of this preamble.) It is important to point out that the agency has no authority to duplicate or enforce the Federal Motor Vehicle Safety Standards, the corporate average fuel economy level determinations, or the Federal Motor Carrier Safety Regulations.

Accordingly, the tests identified in this proposed rule are to be distinguished from those of Federal agencies with enforcement responsibility in these areas. In one case where the proposed test is similar to an existing Federal standard—the noise test of the Federal Motor Carrier Safety Regulation—the agency proposes a standard which is consistent with the FHWA requirement. However, UMTA stresses, again, that the tests proposed in this regulation are designed for a purpose different from that of the traditional "safety" agency. The purpose of this bus testing program is not to pass or fail vehicles, but to provide information to potential purchasers of mass transit vehicles who are using UMTA funds for this purpose.

The agency is proposing to run only one vehicle of each model through the test facility. The vehicle may not be a test prototype, but must be the actual vehicle that is being or will be produced by the manufacturer. The vehicle must be fabricated and assembled by techniques and tooling that will be used in the production of subsequent buses of that model. The agency will rely on the fact that the manufacturer must certify under DOT's National Highway Traffic Safety Administration's regulations that it meets all applicable Federal motor vehicle safety standards, and the manufacturer must be able to make this certification before any vehicle may be tested at the Altoona facility.

The agency believes that the regulation must provide for tests which are consistent with the performance features identified in the legislation. It is also the agency's preliminary determination that on-site physical performance testing is required by the legislation. Further, it is important to note that the testing process is expected to be lengthy, and in some cases a bus could remain at the facility for a number of months. On the other hand, the agency seeks comments on whether actual performance data on vehicles could be analyzed at the facility in some cases in lieu of physical testing. Any comments should be specific concerning which performance feature is being documented and the method used to verify the performance characteristic.

In accordance with the legislative history of this provision, UMTA, in developing the various tests, is taking into consideration a report, "First Article Transit Bus Test Plan." The new bus model Test Plan ultimately will be developed by the operator of the facility, subject to approval by UMTA. It is expected that the Test Plan will evolve over time in light of experience gained by the operator of the facility. We want to emphasize that while we seek general comment on the seven tests outlined in the NPRM, the actual Test Plans are not subject to the regulatory process and can and will be updated and revised from time-to-time. Both the agency and the operator, however, will be open to the recommendations and suggestions of those who have had a vehicle tested at the facility. Moreover, the tests discussed below in the "Section-by-

Section" part generally apply to larger buses. Tests for smaller vehicles will be modified accordingly to address the unique characteristics of such vehicles. Test procedures will be made available to manufacturers and the agency seeks comment on how this should be done.

• *Facility Procedures.* The facility will be operated by an UMTA contractor, who will set fees, subject to UMTA approval. These fees collected by the contractor will be used to pay for the costs of the tests and the maintenance of the test facility.

UMTA in particular seeks comment on whether and to what extent a manufacturer's representative should have the opportunity to be available at the facility to provide, for example, routine maintenance. A vehicle may be at the site for several months and it is anticipated that manufacturers will want to maintain their vehicles themselves during that period. Should this be permitted? If so, what should be the extent of contact between the manufacturer's representative and the operator of the facility?

We also are proposing that the entity should have the right at any time before the Test Report is completed to withdraw its vehicle from testing at the facility. In such a case, the manufacturer would have to pay a pro rata share of the testing that had been done up to the point of withdrawal, but no records of that bus testing would be made available. Upon completion of testing, the contractor will provide the entity a copy of the test results for its vehicle. The agency also has decided preliminarily that the trigger for the test information becoming available to the public is at the point the manufacturer decides to respond initially to a procurement bid by an UMTA recipient. These tentative decisions raise several issues concerning confidentiality and disclosure of information on which the agency seeks comment.

The agency specifically seeks comment on whether this proposal is in the best interest of recipients and meets a legitimate privacy need of the manufacturers. The agency recognizes that there may be other Federal agencies, such as the Environmental Protection Agency or the National Highway Traffic Safety Administration, which may have an interest in any and all data that is generated by the testing facility. Should all testing data be made available to such agencies? For example, under the UMTA's proposal, any data collected by the contractor on a vehicle which is withdrawn by the manufacturer before the completion of testing is not available to anyone except the manufacturer. It may aid NHTSA in its enforcement efforts to have access to any and all raw data collected at the test site, since safety related defects may be identified either by NHTSA or the manufacturer itself. (Irrespective of any information collected at the bus testing facility, under the law administered by NHTSA, manufacturers of vehicles that contain a safety-related defect must notify purchasers of the vehicle and remedy the defect free of charge.) UMTA requests comments on how NHTSA's interest in obtaining Test Reports on vehicles tested at the facility, including those on vehicles withdrawn by their manufacturers before the completion of testing, can be balanced with the interest manufacturers might have in restricting the availability of the Test Report on withdrawn vehicles.

It is important to note, moreover, that UMTA's function under the legislation is different from that of the safety enforcement agencies, and the agency does not seek to inflate the significance of the data collection of this facility beyond that anticipated by Congress. In our view, the Altoona facility is intended to develop information on new models that can be reviewed by recipients when the recipient is choosing among alternative vehicles to purchase or lease with UMTA funds. The results of the tests are not pass/fail; they are informational.

The statute further provides that the testing will not be done by the agency, but by a contractor. The contractor will make the report available to the manufacturer and will have all publicly available reports at the test facility for distribution. UMTA does not see itself in the role of distributing the information, although it will analyze the reports and review activities at the facility as part of its generall oversight role.

It is important to emphasize again that the Test Report is not a pass/fail document. Rather, the statute clearly provides only that a new bus model is to be tested at the facility. Thus, it contemplates that a purchasers will take into consideration the results of the tests in making a decision to purchase a particular vehicle. This means that the Test Report becomes an important document. We recognize that the manufacturer of the vehicle has an interest in the Test Report, and in some circumstances may want to keep it confidential. Since the legislation is designed only to make information available in connection with the use of Federal funds in vehicle acquisition, only that action should trigger the necessity of the manufacturer to make the Report public initially.

On the other hand, the tests will have been conducted at a facility to implement a Federal statute, and potential purchasers in the industry may well have a keen interest in reviewing all Test Reports. And as just discussed, other Federal agencies may have an interest in the data, whether or not directly related to this proposed program. Accordingly, we have attempted to strike a balance between these interests and tentatively propose that a Test Report may be kept confidential until the model of the bus tested is offered for sale to an UMTA grantee. UMTA believes that once such a model is in the procurement process, the Test Report from that time forward should be available publicly. UMTA seeks particular comment on this issue.

• *Transition Period.* Because of the time it may take to implement the modifications required to be made to the existing facilities in Altoona, the Bus Testing Facility may not be in full operation by September 30, 1989, and may not therefore be capable of supporting the performance of all bus tests required by this regulation. During the transition period before the facility is in full operation, only tests that can be conducted at the facility will be performed at the facility.

UMTA is considering a number of possibilities regarding testing during the transition period. Should the tests be limited only to those that can be performed at the Bus Testing Facility? Or should UMTA require the manufacturer to conduct those tests that cannot yet be done at the facility, and provide the resulting data to the operator of the facility for inclusion in the Test Report?

Or is there some other option that could be considered for purposes of the transition period? One possible way to implement this program would be to phase in the types of vehicles tested at the facility. For example, the contractor may complete the test procedures for one type of vehicle—say the large 35–40 foot passenger bus before it completes the procedures for smaller volume vehicles, such as vans. Arguably, the agency could implement the program for large buses (for example) and have a staggered implementation schedule for other types of vehicles.

UMTA will issue its specific guidance on this transition period by August 14, 1989.

2. Section-by-Section Analysis

The proposed regulation is divided into three subparts. Subpart A sets out the purpose and scope of the regulation, defines important terms, and describes how certifications of compliance with the regulation are to be made. Subpart B

sets forth the procedures to be used at the bus testing facility, and describes the Test Report that will be issued at the completion of testing. Finally, Subpart C describes how the bus facility will be operated.

Subpart A includes general information about the NPRM. Section 665.1 explains the underlying intent of the statutory provision. Section 665.3 provides that the regulation will apply to the purchase of vehicles under sections 3, 9, 16(b)(2), and 18 of the UMT Act. While vehicles occasionally may be acquired under other sections of the UMT Act—the section 6 research program, for example—UMTA does not think it was the intent of Congress to subject such demonstration vehicles to the bus testing requirement, and such programs accordingly are not proposed to be covered by this rule.

Section 665.5 contains definitions of terms used frequently in the regulation. As discussed above, "bus" is defined to include virtually any automotive vehicle purchased with UMTA funds and used for mass transportation purposes but does not include for example, an electrically powered trolley coach—which is not an "automotive" vehicle. "Bus Testing Facility" is defined as the site at Altoona, Pennsylvania as specified in the statute, as well as proving grounds under the jurisdiction of the operator of the facility.

"New Bus Model", also described above, is a bus model that has not been used in mass transportation service in the United States before April 2, 1987, or a bus model which has been used in such service but which after April 2, 1987, is being produced with a major change in configuration or components. While new bus model is defined in the statute, we have added a list of items that details what constitutes a major change in configuration or components. These include changes of the engine by the manufacturer; of fuel or energy source; in the design and configuration of the propulsion system; in the steering system; structural modifications; in location of or addition of a wheelchair lift; in manufacturing or assembly methods; of the center of gravity; in gross vehicle weight and weight distribution between axles; of wheelbase or tread width; or of the suspension system. A change of model year designation, absent any other change, would not trigger the testing requirements.

This list, while not necessarily all-inclusive, does provide a detailed description of the types of things that would be considered a major change in configuration or components, and would thus require a bus to be tested at the facility. We particularly seek comment on whether there are other aspects that might be considered major changes in components or configurations that we did not address.

Also discussed in detail earlier in the preamble, the agency seeks comment on the appropriate date to trigger the application of this statute.

"Recipient" is defined as a recipient of funds under section 3, 9, 16(b)(2), or 18 of the UMT Act. Thus, any such recipient would have to certify compliance with the regulations. In its broadest application, this would require that a recipient who contracts out its operation, still would have to certify that any public or private operator for it would comply with the regulation. This section also defines the "Test Report," the document prepared for each vehicle that has completed testing at the bus testing facility.

The final section of Subpart A describes the certification a recipient must make to be in compliance with the rule. In general, a recipient must certify in each application to UMTA for the acquisition of vehicles that any new model bus to be purchased or leased with UMTA funds obligated after September 30, 1989, or expended by the recipient after that date, shall be tested at the bus testing facility before final acquisition by the recipient.

If the recipient has not made this certification and will expend UMTA funds after September 30, 1989, for the purchase or lease of a new bus model, the recipient must separately certify to UMTA that such bus model will have been tested at the facility. Finally, it is possible that a recipient could purchase or lease a bus that is not a new bus model and then have it modified in such a way that—if it were a manufacturer modification—it would be considered a vehicle produced with a major change in configuration or components. Such a manufacturer change would require the vehicle to be tested at the facility. Since the recipient already has purchased the vehicle, would this modification trigger the requirements of the statute? On the one hand it could be an enormous burden on small transit agencies if UMTA decided that every "major change in configuration or components" made by the transit agency triggered the provisions of the statute. On the other hand, if the agency allows small transit agencies to make modifications to vehicles that in other circumstances would require testing at the facility, would this be an obvious way to try and circumvent the intention of the statute? If we did require testing after the vehicle was purchased with UMTA funds, the recipient also would have to separately certify to UMTA that the bus had been tested at the facility before it could be placed in revenue service.

Subpart B sets forth the bus testing procedures. Only a single model of a new bus model needs to be tested at the facility. Any such model cannot be a prototype vehicle. Rather, it must be a model that is fabricated and assembled substantially in the same way that production of subsequent vehicles are to be manufactured. The vehicle also must meet all relevant Federal Motor Vehicle Safety Standards before it can be tested at the facility. Certification in accordance with NHTSA regulations is sufficient to indicate that such Standards have been met. Once the operator of the facility has been provided such certification, the vehicle may be tested at the bus testing facility. The testing will be thorough and may require a vehicle to remain at the facility for a number of months.

The seven tests to be performed on each vehicle are required by the bus testing legislation and are based in part on tests described in the UMTA report "First Article Transit Bus Test Plan", which is mentioned in the legislative history of Section 317. When appropriate, SAE test procedures and other procedures accepted by the transit industry will be used, but many of the seven tests have not been addressed by a generally acceptable and valid testing procedures other than those described in the "First Article Transit Bus Test Plan". Most of the bus tests to be performed at the facility will produce information that is usually not obtained until a vehicle has been in revenue service for a year or more. The seven tests are discussed in the following paragraphs.

This discussion of testing in this proposed rule provides comments with information on what UMTA currently is anticipating the tests will be like and provides a basis for comments on the scope of the rule. Nor will the final rule present a definitive final test plan. Rather, it will outline the seven tests. The basic purpose of the regulation is to identify broadly the areas of testing required by section 317.

The current discussion, moreover, essentially covers *large* vehicles. UMTA recognizes that the tests will have to be adjusted for smaller vehicles and that, most likely, UMTA and the operator will from time to time adjust those plans as necessary to reflect ongoing experience and information. Again, the discussion is being presented to afford commenters as much information as possible in this NPRM. The test plans ultimately used

may vary significantly from those discussed here.

• *Maintainability.* The agency proposes that the maintainability test include bus servicing, preventive maintenance, inspection, and repair. It also will include the removal and reinstallation of the engine and drive train components that would be expected to require replacement during the bus' normal life cycle. Much of the maintainability data will be obtained during the bus durability test at the proving ground. Twenty-five percent of the bus life will be simulated and there will, obviously, be servicing, preventive maintenance, and repair actions. These actions will be done by test facility staff. We do not expect that the operator will become familiar with the detailed design of all new bus models that are tested. Therefore, tests to determine the time and skill required to remove and reinstall an engine, a transmission, or other major propulsion system components will require that either the bus manufacturer provide personnel to perform such work or provide very detailed instructions and have staff on site during the testing to provide consultation and support.

The maintainability test report will include the frequency, personnel hours, and replacement parts or supplies required for each action during the test. The accessibility of selected components and other observations that could be important to a bus user will be included in the report.

• *Reliability.* The question of reliability will be addressed by recording all bus breakdowns (equipment, structure, etc.) during testing. It is recognized that with one test bus it is not feasible to conduct statistical reliability tests, but bus availability for operation during the proving ground test will tell much about the bus and its design. It is anticipated that bus operation on the durability course should reveal the problems that would otherwise not be detected until much later during scheduled transit service. The bus failures, repair time and the actions required to get the bus back into operation will be recorded in the report.

• *Safety.* The safety test will be a handling and stability test. The test is an obstacle avoidance or double-lane change test that will be performed at the proving ground. The double-lane change course will be different for each type of bus and the speed could be different for each type of bus. In a safety test for a heavy-duty 35-to 40-foot bus the double-lane change test course will be set up using pylons set with 100-foot-long gates and 12-foot center-to-center adjacent lanes. That is, a longitudinal distance of 100 feet will be available for the coach to change from one lane to an adjacent lane with a 12-foot center-to-center distance. The coach will run for 100 feet in the adjacent lane and then return to the original lane within a third 100 feet. Coach speed will be held constant throughout a given test run. Individual test runs will be made at increasing speeds up to 45 mph or until the coach can no longer be operated safely over the course, whichever speed is lower. Both left- and right-hand lane changes will be tested. The 45 mph maximum speed was selected because it is a reasonable speed at which to expect this bus type to maneuver safely. Tests from smaller vehicles will be adapted from this basic procedure, although we seek comment on how this test could be adapted for smaller vehicles, such as vans.

• *Performance.* The performance test will be performed on the proving ground and will measure acceleration and gradeability. Top speed also will be measured if it can be done safely on the track. The test will be performed using a fifth wheel and associated instrumentation. The test vehicle will be operated at seated load weight on a smooth level track. The test will be set up to use a straight part of the track when possible. The bus will be accelerated at full throttle from standstill to maximum safe speed on the track. The report will include a table of time required to accelerate to each 10 mph increment of speed and when possible, the top speed. The gradeability capabilities will be calculated from the test data.

• *Structural Integrity.* Two structural integrity tests will be performed. The first is a structural strength and distortion test that will be performed at the testing facility in Altoona and a durability test that will be performed at the proving ground.

The structural strength and distortion test will be different for each type of bus. For example, for a heavy-duty 35-to 40-foot bus it is anticipated that the following procedures will be used.

(1) Shakedown the bus structure by loading and unloading the bus no more than three times with a distributed load equal to 2.5 times gross load. Gross load is 150 lb for every passenger seating position, for the driver, and for each 1.5 sq. ft. of free floor space. For a distributed load equal to 2.5 times gross load, place a 375-lb load on each passenger and driver seat (i.e., seating position) and on each 1½ sq. ft. of free floor space. Then load the bus with a distributed load to gross vehicle weight. Gross vehicle weight is curb weight plus gross load. Measure the increase in floor deflection as the bus weight is increased from curb weight to gross vehicle weight. Then load the bus with a distributed load equal to 2.5 times gross load. Unload and bus and inspect for any permanent deformation of the floor and/or coach structure.

(2) With the bus loaded to gross vehicle weight, first locate all four wheels on a flat, horizontal surface. Then locate one wheel on top of a 6-inch-high curb and then in a 6-inch-deep pot hole. Repeat for all four wheels. For all nine conditions, verify: (a) Normal operation of the steering mechanism and (b) operability of all passenger doors (including sensitive edges, if so equipped), passenger escape mechanisms, side windows, and service doors. With a garden hose and nozzle, leak check windows, passenger doors, and escape hatches.

(3) Using a load-equalizing towing sling, statically apply a tension load equal to 1.2 times the bus curb weight at an angle of 20 degrees with the longitudinal axis of the bus, first to one side then the other in the horizontal plane and then upward and downward in the vertical place, to the front towing fixtures. Remove the load. Visually inspect tow eyes and adjoining structure for damage or permanent deformation after each loading condition. Repeat for rear towing fixture(s).

(4) With the bus at curb weight, use the tow bar provided for the bus and a heavy wrecker truck to lift the front wheels clear of the ground. Tow the bus 5 miles at 20 mph. Release the bus from the wrecker. Inspect visually for structural damage or permanent deformation. Operate all doors, windows, and passenger escape mechanisms to assure that the surrounding structures are not deformed.

(5) With the bus at curb weight on a level hard surface, deflate the tire(s) at one corner. Then jack up the coach to a height sufficient to provide 3 inches clearance between an inflated tire and the hard surface. Reinflate the tire(s) and release the jack. Inspect visually for structural damage or permanent deformation. Repeat the test at all four wheel locations.

(6) With the bus at curb weight, hoist the coach with an appropriate two-post hoist system. Use the bus axles or jacking plates to accommodate the lifting pads of the hoist. Note failure of the bus to interface properly with the hoist and any instability of raised bus on hoist. Lower the bus and inspect visually for structural damage or permanent deformation of jacking plates. Repeat the test supporting the

bus on jack stands independent of the hoist.

The report on this test would include floor deflection and permanent deformation; operability of steering, doors and windows while: structure is deformed; structural damage or deformation by lifting, towing, and jacking.

The structural durability test also will be different for each type of bus, but all tests will be performed on the durability course at the proving ground. The test will be an accelerated life test that simulates twenty-five percent of the vehicle's normal service life. During the test, there will be inspections of the bus structure. Once each week, the bus will be washed and its entire underside, including all structural members, will be steam cleaned. All structural members will be inspected visually for damage, cracks, permanent deformation, and/or excessive corrosion. The entire outside and inside surfaces of the body, doors, windows, and openings will be inspected for signs of structural deterioration. At each inspection, bus mileage will be recorded along with any structural or deterioration identified.

• *Fuel Economy.* This test will be run to determine the fuel economy in miles per gallon of the new bus model. The test will be run at seated load weight on a duty cycle that simulates transit service for the type of vehicle being tested. For example, a heavy-duty 35- to 40-foot bus would be operated over the Advanced Design Bus duty cycle which calls for four phases of operation: central business district, arterial, commuter, and idle. The test for heavy-duty buses would be based on currently applicable SAE procedures. The methods of fuel use measurement for different fuels and bus types have not been determined since fuels could include diesel, gasoline, alcohol, natural gas, etc. The fuel measurement devices under consideration include volumetric, gravimetric, flow, and pressure.

The agency notes that this fuel economy test bears no relation to the calculations done by the Environmental Protection Agency (EPA) to determine fuel economy levels for the Corporate Average Fuel Economy Program. EPA's calculations are based on tests conducted under laboratory conditions intended to simulate city and highway driving. UMTA's fuel economy test, as proposed here, is a measurement of the mileage per gallon of gasoline expended by a vehicle travelling a track. In most likelihood, UMTA's test results will not represent actual mileage, as is the goal of the EPA calculations. UMTA's test will be provide data, however, which can be compared by recipients in their deliberations concerning purchase decisions. Moreover, to the extent the UMTA test covers vehicles not tested by EPA (vehicles with gross vehicle weight ratings of greater than 8,500 pounds), the test will provide to the recipient some information in the fuel economy area, where none previously existed.

• *Noise.* The noise test area will include two tests: Interior Noise and Vibration and Exterior Noise. It is recognized that different levels of noise are expected and acceptable with different types of vehicles and different test procedures might be required. The following are tests for heavy-duty 35- to 40-foot buses. Obviously, the tests could be significantly different for other types of buses.

The heavy-duty bus interior noise and vibration that will be performed at the proving ground and will measure internal noise levels and check for reasonable vibration. The test conditions will be:

(1) With a noise generator and load speaker system create a white noise level of 80 dBA at the outside skin on the left side of the bus (i.e., the side opposite the doors). Measure the noise level at various points throughout the interior of the bus. All openings, including doors and windows, will be closed and the engine and all accessories switched off during the test.

(2) Accelerate the bus at full throttle from a standing start to 35 mph on level commercial asphalt or concrete pavement in an area free of large reflecting surfaces within 50 ft of the bus path. Measure bus-generated noise level at ear height of a seated 50th percentile male in the rear most passenger seats, at the middle of the passenger compartment or engine-transmission location for buses with under-floor engines, and at the driver's seat. All openings will be closed and all accessories will be operating during the test.

(3) Operate the bus at various speeds from 0 to 55 mph on various road conditions with and without A/C on. Record any abnormal audible or visible resonant vibrations or rattles within the bus.

The heavy-duty bus exterior noise test will measure exterior noise levels when the new bus model is operated under various test conditions. The test conditions will be:

(1) Bus stationary with the engine at high idle and neutral gear.

(2) Bus pulling away from a stop at full throttle.

(3) Bus accelerating at full throttle at or below 35 mph and just prior to transmission upshift.

Airborne noise generated by the bus will be measured on both sides of the bus at points 50 feet from the perpendicular to centerline of the coach with all accessories operating. Instrumentation, test sites, and other general requirements will be in accordance with SAE Standard J366. The curb idle test will be conducted with the microphone located longitudinally in line with the rear bumper. The pull-away test will begin with the microphone located longitudinally in line with the front bumper.

Section 663.13 describes the Test Report that the operator of the facility provides to the entity that is having the test performed. The Test Report is not a "pass/fail" document, but rather records the vehicle's performance during the testing. A manufacturer who is bidding on a contract for purchase or lease must provide a copy of this Report to a potential purchaser of a bus to show that the bus model has been tested at the facility. The manufacturer must certify that the bus model is the same as the one tested, or describe changes to the bus that have been made and explain why they are not major changes under UMTA regulations.

In addition, § 663.13 provides that the operator of the facility will have available for distribution all publicly available reports. The section also requires that the manufacturer notify the operator when it makes a report available to a grantee for the first time.

We particularly seek comment on when the Test Report should be made public. We are proposing that it may be kept confidential by the manufacturer until such time as the manufacturer attempts to sell a bus model like the one tested. At that point, the clear intent of the law would be to make the information available publicly so that potential purchasers could themselves review the vehicle's performance at the facility. The other options under review were discussed earlier in this preamble.

Subpart C explains how the facility is to be operated. UMTA will choose the operator, who will have proving grounds available. The operator will establish the fees to be charged for the bus testing, subject to UMTA approval. The operator also shall prepare, with UMTA review and concurrence, the detailed test plan procedures implementing the seven tests discussed above.

A bus may be removed from testing at any point by the entity having the tests performed, and no record shall be kept or made available with respect to such bus. Any such bus model that is to be retested must start from the beginning.

All testing at the site is to be conducted by staff of the operator of the facility, or those under contract to the operator. Those having a vehicle tested may observe all tests.

C. Request for Comments

This agency seeks comment on this proposed regulation to establish a bus testing facility.

Commenters wishing acknowledgement of their comments should include a self-addressed, stamped postcard with their comments. The Docket Clerk will stamp the card with the date and time the comments are received and return the card to the commenter.

D. Regulatory Impacts

1. Executive Order 12291

This action has been reviewed under Executive Order 12291, and it has been determined that it is not a major rule. It will not result in an annual effect on the economy of $100 million or more.

2. Regulatory Evaluation

This regulation is significant under the Department's Regulatory Policies and Procedures, because of the potential high level of public interest. UMTA has prepared a preliminary regulatory evaluation in support of this rulemaking. This preliminary regulatory evaluation is on file as part of the docket to this rulemaking. A final regulatory evaluation will be prepared before this proposed rule becomes final. UMTA particularly seeks specific data regarding the cost of the proposed rule, both in terms of costs to the manufacturer and the recipient, so that such information may be reflected in the final regulatory evaluation. The actual process of testing the bus would exact wear and tear on the vehicle. Since the tests will attempt to simulate a fourth of a bus' life, it is not unreasonable to expect that there will be some cost in the form of depreciation. A fourth of the value for a large bus could be up to $50,000, and for a van as little as $5,000.

3. Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96-354, UMTA believes that this rule may have a significant economic impact on a substantial number of small entities within the meaning of the Act, and accordingly has addressed this impact in the preliminary regulatory evaluation. The agency is concerned and particularly seeks comment on the potential impact of this rule on the small manufacturer—of vans, paratransit vehicles and the like. Purchasers of these vehicles also are the most likely beneficiaries of this program, since the market is so diffuse.

4. Paperwork Reduction Act

The collection of information requirements in this rule are subject to the Paperwork Reduction Act, Pub. L. 95-511, 44 U.S.C. Chapter 35. Section 317 of the Surface Transportation and Uniform Relocation Assistance Act specifically requires the creation of the facility and, in effect, the Test Reports. The Reports reflected in this rule are being submitted to the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) for approval.

5. Federalism—Executive Order 12612

UMTA has reviewed this proposed rule in light of the Federalism considerations set forth in Executive Order 12612. That Executive Order requires each Federal agency to address the impact of its regulations on State and local governments. Although this rule would have definite Federalism implications because it would impose additional requirements on States, local governments, and public transit operators receiving Federal financial assistance from UMTA, this rulemaking is required by statute. UMTA considered the Federalism implications of this rulemaking in formulating this proposal, and has designed it to provide recipients with as much flexibility as possible under the law. UMTA does not expect that this proposed rule will have a substantial direct effect on the relationship between the Federal Government and the States or the distribution of power and responsibilities among the various levels of government.

In addition, UMTA has considered the Federalism implications of this rulemaking on public transit operators which are quasi-governmental or instrumentalities of States and local governments, and UMTA does not expect that this proposed rule will have a substantial direct effect on the relationship between those public operators and the governmental entities with which they are associated. Accordingly UMTA has determined that the preparation of a Federalism Assessment under Executive Order 12612 is not warranted.

Lists of Subjects in 49 CFR Part 665

Vehicle testing, Grant programs—transportation, Mass transportation.

Accordingly, for the reasons described in the preamble, 49 CFR Chapter VI would be amended as follows:

49 CFR is proposed to be amended by adding a new Part 665, as set forth below:

PART 665—BUS TESTING

Subpart A—General

Sec.

665.1 Purpose.
665.3 Scope.
665.5 Definitions.
665.7 Grantee certification of compliance.

Subpart B—Bus Testing Procedures

665.11 Testing requirements
665.13 Test report and manufacturer certification.

Subpart C—Operations

665.21 Operations.
665.23 Transition period.

Authority: Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. 1601 et seq., 1608(h), and 49 CFR 1.51.

Subpart A—General

§ 665.1 Purpose.

This part provides that an applicant for Federal financial assistance under the UMT Act for the purchase or lease of buses must certify to UMTA that any new bus model so acquired with such assistance has been tested in accordance with this part.

§ 665.3 Scope.

This part applies to a recipient of Federal financial assistance under sections 3, 9, 16(b)(2), or 18 of the UMT Act.

§ 665.5 Definitions.

As used in this part—

"Administrator" means the Administrator of the Urban Mass Transportation Administration or designee.

"Bus" means a rubber-tired automotive vehicle used for the provision of mass transportation service by or for a recipient.

"Bus Model" means a bus design or variation of a bus design usually designated by the manufacturer by a specific name and/or model number.

"Bus Testing Facility" means a testing facility established by renovation of a facility constructed with Federal assistance at Altoona, Pennsylvania under section 317(b)(1) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and includes any proving ground facilities operated in connection with the facility.

"Major changes in configuration or components" a significant impact on bus performance, reliability, maintainability, structural integrity, safety, fuel

economy, or noise of the vehicle, including changes—

(1) Of major components such as engine, transmission, axle, and the like (other than routine repairs);

(2) Of fuel or energy source;

(3) In the design or configuration of the propulsion system;

(4) In the steering system;

(5) Involving structural modifications;

(6) In location of or addition of a wheelchair lift;

(7) In manufacturing or assembly methods;

(8) Of the center of gravity which could affect the dynamics and/or the handling characteristics;

(9) In gross vehicle weight and weight distribution between axles;

(10) In location of the driving axle;

(11) Of wheelbase or tread width, including a change in the number of axles or number of tires; or

(12) Of the suspension system.

"Mass Transportation Service" means the operation of a vehicle which provides general or special service to the public on a regular and continuing basis.

"New Bus Model" means a bus model which—

(1) Has not been used in mass transportation service in the United States before April 2, 1987; or

(2) Has been used in such service but which after April 2, 1987, is being produced with a major change in configuration or components.

"Recipient" means a direct recipient of funds under sections 3, 9, 16(b)(2), or 18 of the UMT Act.

"Test Report" means the final document prepared by the operator of the Bus Testing Facility stating the results of the tests performed on each bus.

"UMT Act" means the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. app. 1601 et seq.)

§ 665.7 Grantee certification of compliance.

(a) In each application to UMTA for the purchase or lease of buses, a recipient will certify that any new bus model to be acquired with funds obligated by UMTA or expended by the recipient after September 30, 1989, will be tested at the Bus Testing Facility before final acceptance by the recipient.

(b) If a recipient has not made the certification required under paragraph (a) of this section and will expend UMTA funds after September 30, 1989, for the purchase of a new bus model, the recipient shall certify directly to UMTA that such bus model will have been tested at the Bus Testing Facility before final acceptance by the recipient.

(c) If a recipient purchases or leases a bus not subject to this part with funds obligated by UMTA or expended by the recipient after September 30, 1989, but a major change in configuration or components of such bus is made after April 2, 1987, the recipient shall certify directly to UMTA that any such bus has been tested at the bus testing facility before it is placed in revenue service.

Subpart B—Bus Testing Procedures

§ 665.11 Testing requirements.

(a) A new bus model to be tested at the Bus Testing Facility shall—

(1) Be a single model;

(2) Meet all applicable Federal Motor Vehicle Safety Standards, as defined by the National Highway Traffic Safety Administration in Part 571 of this title;

(3) Be substantially fabricated and assembled by techniques and tooling that will be used in production of subsequent buses of that model.

(b) The model shall be tested for maintainability, reliability, safety, performance, structural integrity, fuel economy, and noise, and detailed test procedures shall be developed generally for the following bus categories—

(1) Heavy duty standard size (35 to 40 foot);

(2) Heavy duty small size (generally, 30 foot);

(3) Heavy duty, articulated (55 to 60 foot);

(4) Medium duty; and

(5) Vans (regular and modified).

(c) The operator of the facility shall develop a test plan, approved by UMTA, generally following these guidelines—

(1) *Maintainability.* This test records the accessibility and maintainability of the bus during servicing, preventive maintenance, inspections, simulated repairs, and repairs during the time the vehicle is at the Bus Testing Facility.

(2) *Reliability.* Bus failures, repair time and actions required to get the bus back into operation will be tracked as the bus is taken through the various tests. Each failure of the vehicle during testing will be documented.

(3) *Safety.* The handling and stability of the vehicle is determined by using such methods as obstacle avoidance tests.

(4) *Performance.* This test records the acceleration, gradeability, and top speed (where possible) of the vehicle.

(5) *Structural Strength.* The structural strength and distortion test includes towing and hoisting tests and operation of subassemblies such as of the steering mechanism, doors, escape mechanisms, and windows, and leak testing of the vehicles on a flat surface and also distorted to simulate wheels on curbs and in potholes. The vehicle will be subject to static loads to measure for permanent deformation and damage.

(6) *Structural Durability.* The structural durability test is performed on the proving ground durability course and will simulate twenty-five percent of the vehicle's normal service life.

(7) *Fuel Economy.* The vehicle fuel economy in miles per gallon is measured at normal seated load conditions on a course and with operating duty cycle appropriate to the type of bus being tested.

(8) *Noise.* The interior noise and vibration tests measure interior noise created by an external source; noise level at the driver, middle and rear passenger positions during various operating conditions.

(9) The exterior noise test measures airborne noise generated by the vehicle during various operating conditions.

§ 665.13 Test report and manufacturer certification.

(a) Upon completion of testing, the operator of the facility shall provide a Test Report to the entity that has had the bus tested.

(b)(1) A manufacturer may provide a copy of this Report to a recipient as proof of completion of testing, and shall certify that a new bus model to be purchased or leased by the recipient is the same as the bus that is the subject of the Test Report.

(2) A manufacturer who releases a report under paragraph (b)(1) of this section also shall provide notice to the operator of the facility that the report is available to the public.

(c) If a bus model subject to a Test Report has a change in configuration or component that is not a major change under this part, the manufacturer shall include in its certification a description of the change and its basis for concluding that it is not a major change.

(d) A Test Report shall be available publicly once the owner of the Report submits a bid involving a bus subject to the Report. Each manufacturer shall make copies available to interested persons. In addition, the operator of the facility will have available for distribution copies of all of the publicly available reports.

(e) The Test Report is the only information or documentation that will be made available publicly in connection with any bus model tested at the facility.

Subpart C—Operations

§ 663.21 Operations.

(a) The bus testing facility is located in Altoona, Pennsylvania, and includes proving ground facilities operated by the operator of the facility.

(b) The facility is operated by a person under contract with UMTA.

(c) Fees charged by the operator for the testing of the vehicles will be according to a schedule and will be approved by UMTA.

(d) The entity having a new bus model tested may terminate the test program at any time before the completion of testing, and shall be charged a pro rata fee for the tests performed as well as a termination fee.

(e) The operator performs all testing. Bus manufacturer staff may be requested to support and advise during some of the tests.

(f) The bus manufacturer may observe all tests. The manufacturer may not provide maintenance or servicing of a bus after the start of the durability test unless requested by the operator.

§ 665.23 Transition period.

Because the bus testing facility may not be fully operational for a period of time, the operator, with UMTA approval, shall prepare an interim test plan.

Issued on: May 22, 1989.

Alfred A. DelliBovi,

Administrator.

[FR Doc. 89–12520 Filed 5–24–89; 8:45 am]

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federal register

Thursday
May 25, 1989

Part VI

Department of Education

34 CFR Part 212

Migrant Education Even Start; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 212

RIN 1810-AA39

Migrant Education Even Start

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues regulations to govern the Migrant Education Even Start program, which was authorized by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, in amendments to the Elementary and Secondary Education Act of 1965. The regulations are to be added to the existing Even Start regulations, which were published in final form on March 23, 1989, in the **Federal Register** (54 FR 12138).

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Mr. Joseph P. Bertoglio, Office of Migrant Education, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2145, FOB #6, Washington, DC 20202-6135. Telephone No. (202) 732-4758.

SUPPLEMENTARY INFORMATION: On December 21, 1988, the Secretary published a notice of proposed rulemaking (NPRM) for the Migrant Education Even Start program in the **Federal Register** (53 FR 51530). The NPRM explained significant provisions of the proposed regulations, and specified eligible participants, selection criteria, equitable distribution of assistance, and the process of making continuation awards.

The only major changes from the NPRM in these final regulations are the inclusion in § 212.52(b) ("Who may be served?") of formerly migratory children as eligible participants if space is available and the addition of a new § 212.58 to permit SEAs to subgrant funds to LEAs or other operating agencies. In addition, references have been inserted in § 212.57(a)(3) and § 212.57(b) to further clarify the applicability of the regulations cited in § 212.5(a) to SEAs receiving grants under the Migrant Education Even Start program. Furthermore, § 212.55(c) has been modified to clarify the distribution of the 20 points possible under the criterion referenced in § 212.21(e) ("Promise as a model"). Section 212.57 notes that § 212.25, regarding continuation awards, is applicable to the Migrant Education Even Start program.

The content and procedure for the submission of the "yearly progress report" and "information collected throughout the project period," required in § 212.25(c)(1) in order to evaluate performance for making continuation awards, are not addressed in these final regulations. The procedure, content, and timeframe for this information requirement will be addressed in the instructions for submission of the continuation grant application.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, two parties submitted written comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Major issues are grouped according to subject, with appropriate sections of the regulations referenced in parentheses. Technical and minor changes are not addressed.

Children Eligible To Participate (§ 212.52)

Comments: Commenters objected to the provision in § 212.52(b) restricting eligibility to currently migratory children. The justification for this restriction, as stated in the preamble to the NPRM, was that it would ensure that the services would be provided to the children most in need. The commenters disagreed with this justification, saying that children who move do not necessarily have the greatest need, and that a migrant child who has recently stopped migrating could have as great or a greater need for services as a currently migratory child.

Discussion: Section 1053 of the Act, which establishes the migrant education component of the Even Start program, provides the Secretary with broad authority to establish rules for the special migrant education component. Without congressional clarification of what types of migratory children should be eligible to participate, the Secretary has determined that eligibility for Even Start program services should parallel the statutory priority favoring currently migratory children over formerly migratory children that governs children to be served by the much larger migrant education formula grant program (see section 1202(b) of that Act). An individual formerly migratory child may have a need for services that exceeds that of an individual currently migratory child. However, the Secretary believes that concentration of the limited funds available under the migrant education component of the Even Start program on currently migratory children in need of services is reasonable and in keeping with the statement of congressional priorities in section 1202(b).

While maintaining the need to concentrate Even Start program funding on meeting the needs of currently migratory children (and their parents), the Secretary agrees with the commenter that some flexibility should exist in view of formerly migratory children (and their parents) who may also need Migrant Education Even Start program services. The Secretary has concluded that as long as currently migratory children in need of program services are given priority over formerly migratory children in need of program services, project participation may include formerly migratory children (and their parents).

Changes: Section 212.52 has been amended to include formerly migratory children as eligible to participate, but only if space is available.

Federal Share Limitation § 212.53(a)(2)

Comments: A commenter objected to the provision in proposed § 212.53(a)(2), which would make section 1054(c) of the Act applicable to the Migrant Education Even Start program. This section requires grantees (SEAs) over time to contribute increasing levels of program support from non-Federal sources. The commenter believes that section 1054(c) of the Act should apply only to the Even Start program operated by local educational agencies (LEAs) and that applying it to the migrant education component of the Even Start program would be inappropriate because of the uniqueness of the Migrant Education program as one administered and operated by SEAs, rather than LEAs.

Discussion: Section 1053(a) of the Act directs the Secretary to reserve funds for programs for migratory children that are consistent with the purposes of the Even Start program for LEAs. The Secretary believes that an integral part of the Even Start program for LEAs is the requirement in section 1054(c) of the Act that, over time, the Federal Government provide a decreasing share of program costs. While the migrant education component of the Even Start program will provide grants to SEAs rather than LEAs, the Secretary believes that it is reasonable to expect participating SEAs, working with LEAs that will operate the approved projects, to bear the non-

Federal share of costs provided in section 1054(c) of the Act.

Situations may still exist in which particular communities may view their migratory students unfavorably and choose not to provide local support for a Migrant Education Even Start program. Given the flexibility available to SEAs and LEAs to find sources of monetary or non-monetary non-Federal support, the requirement that a successful applicant provide a non-Federal share of program costs should not impose a prohibitive burden on any SEA or LEA wishing to participate.

Changes: None.

Other Regulations (§ 212.57)

Comments: One commenter stated that, as proposed, the cross-reference in proposed § 212.56(c)(3) (§ 212.57(c)(3) in the final regulations) to § 212.5(a) creates confusion about what regulations are to apply to the migrant education component of the Even Start program. The commenter also questioned the lack of any reference in § 212.5(a) to appeals to the Education Appeal Board or the Office of Administrative Law Judges.

Discussion: The Secretary agrees that further clarification of § 212.57(c)(3) is necessary. The newly created Office of Administrative Law Judges will have jurisdiction to review any appeals from final audit determinations regarding the use of Even Start program funds. The final regulations that govern the new Office of Administrative Law Judges, published in the **Federal Register** on May 5, 1989 (54 FR 19512), apply to the Even Start program.

Changes: Section 212.57 has been modified to clarify the applicability to the migrant education component of regulations listed in § 212.5(a) of the Even Start program regulations.

SEA Subgrants to LEAs (§ 212.58)

Comments: None.

Discussion: Section 75.705 of the Education Department General Administrative Regulations (EDGAR) would prohibit an SEA receiving a Migrant Education Even Start program grant from operating the project through a subgrant of funds to one or more LEAs or local operating agencies. In the NPRM, the Secretary described the Migrant Education Even Start program as "supplemental" to the basic Migrant Education Program, under which most SEAs subgrant funds to LEAs or other operating agencies to operate projects for the SEA. Therefore, the Secretary anticipates that some SEAs receiving grants under the Migrant Education Even Start program may desire to enter into working agreements with LEAs or other operating agencies to permit operation of Even Start projects at the local level alongside regular migrant education projects.

To permit this flexibility, and in view of the broad delegation of authority Congress gave the Secretary in section 1053(a) of the Act to administer the Migrant Education Even Start program in a manner consistent with the Act's purposes, the Secretary has determined that these regulations should permit SEAs to subgrant funds provided the funds are used as the SEA's approved project application specifies. In this regard, the Secretary interprets § 212.26 of the Even Start program regulations, referenced in § 212.57(a)(6) of these regulations, to require the SEA, upon finding that the SEA's subgrantee has not made substantial progress toward meeting the Migrant Education Even Start project's objectives, to take the steps described in that section to ensure that the subgrantee meets those objectives.

Changes: A new § 212.58 has been added to these regulations to reflect this consideration.

Executive Order 12606

The Secretary certifies that these regulations have been reviewed in accordance with the Executive Order 12606 and that they do not have a significant negative impact on family formation, maintenance, and general well-being. To the contrary, the Even Start program has the potential of providing significant advantages to the family. In funding family-centered education projects, the program may help the family perform its educational function, strengthen the stability of the family, and strengthen the role of the parents in the education of their children.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

List of Subjects in 34 CFR Part 212

Children, Coordination, Education, Evaluation, Family, Migratory children, Reporting and recordkeeping requirements, State educational agencies, Subgrants.

Dated: May 17, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.214—Migrant Education Even Start)

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Subpart F to Part 212 to read as follows:

PART 212—EVEN START

* * * * *

Subpart F—Migrant Education Even Start

212.50 What is the Migrant Education Even Start program?
212.51 Who is eligible for a grant?
212.52 Who may be served?
212.53 What applications does the Secretary consider?
212.54 How does the Secretary evaluate an application for a new grant?
212.55 What selection criteria does the Secretary use in making new grants?
212.56 What additional factors does the Secretary consider in making new grants?
212.57 What other provisions in this part apply?
212.58 May and SEA make a subgrant to an LEA or other operating agency?

* * * * *

Subpart F—Migrant Education Even Start

Authority: 20 U.S.C. 2741–2749, 2831, unless otherwise noted.

§ 212.50 What is the Migrant Education Even Start program?

(a) The Migrant Education Even Start program supports grants to eligible SEAs for the cost of providing family-centered education projects to help parents of currently migratory children (as defined in 34 CFR 201.3) become full partners in the education of their children, to assist currently migratory children in reaching their full potential as learners, and to provide literacy training for their parents.

(b) The Secretary makes grants for family-centered education projects that provides services on an intrastate or interstate basis, and that include all of

the program elements required by section 1054(b) of the Act.

(Authority: 20 U.S.C. 2741, 2743, 2831)

§ 212.51 Who is eligible for a grant?

An SEA or a consortium of SEAs that applies under section 1053(a) of the Act is eligible to receive a grant under the Migrant Education Even Start program.

(Authority: 20 U.S.C. 2743, 2831)

§ 212.52 Who may be served?

Persons who may be served by a project under this subpart are—

(a) A parent of a child described in paragraph (b) of this section, if the parent is eligible for participation in an adult basic education program under the Adult Education Act, 20 U.S.C. 1201(a)(1) and (2); and

(b)(1) As a first priortiy, a currently migratory child, aged 1 to 7 inclusive, as defined in 34 CFR 201.3; and

(2) As a second priority and if space is available, a formerly migratory child, aged 1 to 7 inclusive, as defined in 34 CFR 201.3.

(Authority: 20 U.S.C. 2743, 2745, 2831)

§ 212.53 What applications does the Secretary consider?

The Secretary considers an application that—

(a) Meets the purposes of the Migrant Education Even Start program as provided in § 212.50; and

(b) Adequately demonstrates the applicant's ability to provide the additional funding required by section 1054(c) of the Act.

(Authority: 20 U.S.C. 1070d–2(a) and (e), 2743)

§ 212.54 How does the Secretary evaluate an application for a new grant?

(a) The Secretary uses the criteria in § 212.55 to evaluate an application.

(b) The Secretary awards up to 100 possible points for these criteria.

(c) The maximum number of points for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1070d–2(a) and (e), 2743)

§ 212.55 What selection criteria does the Secretary use in making new grants?

The Secretary uses the criteria in § 212.21 in evaluating an application, except that—

(a) In each place term "LEA" appears, the term is considered to mean "SEA";

(b) The criterion in § 212.21(b) (Percentage of eligible children and parents to be served) does not apply; and

(c) The maximum number of points possible under the criterion in § 212.21(e) (Promise as a model) is 20. These points are distributed as follows:
§ 212.21(e)(1)—(9 points),
§ 212.21(e)(2)—(9 points), and
§ 212.21(e)(3)—(2 points).

(Approved by the Office of Management and Budget under control number 1810–0541)

(Authority: 20 U.S.C. 2743, 2831)

§ 212.56 What additional factors does the Secretary consider in making new grants?

(a) In addition to applying the criteria in §§ 212.21 and 212.55, the Secretary ensures that—

(1) Grants are made to projects that ensure coordination and cooperation between States (or areas of a State) in which participating children and parents reside during the year; and

(2) To the extent possible, grants are distributed equitably among the States in the three migrant streams, as defined in paragraph (c) of this section.

(b) In order to meet the requirements of paragraph (a)(2) of this section, the Secretary—

(1) Separates applications into three groups representing the three migrant streams; and

(2) First awards a grant to the applicant in each stream that is ranked the highest as a result of the process in § 212.54, provided that there is an acceptable application from an SEA or consortium of SEAs in that stream.

(c) For the purposes of this section, the States comprising each stream are the following:

Eastern Stream—

Alabama	Georgia	Massachusetts
Connecticut	Kentucky	Mississippi
Delaware	Maine	New Hampshire
Florida	Maryland	New Jersey
New York	Rhode Island	Virginia
North Carolina	South Carolina	West Virginia
Pennsylvania	Tennessee	District of Columbia
Puerto Rico	Vermont	

Central Stream—

Arkansas	Michigan	Oklahoma
Illinois	Minnesota	South Dakota
Indiana	Missouri	Texas
Iowa	Nebraska	Wisconsin
Kansas	North Dakota	
Louisiana	Ohio	

Western Stream—

Alaska	Montana	Washington
Arizona	Nevada	Wyoming
California	New Mexico	Mariana Islands
Colorado	Oregon	
Idaho	Utah	

(Authority: 20 U.S.C. 2743, 2831)

§ 212.57 What other provisions in this part apply?

(a) In addition to the provisions in this subpart, the following provisions in this part apply to the Migrant Education Even Start program:

(1) § 212.3.

(2) § 212.4.

(3) § 212.5(a), except that the reference to section 1052(a) of the Act is read to be to section 1053(a) of the Act.

(4) § 212.6.

(5) § 212.25, except the references in paragraphs (c) and (d) to § 212.21 and § 212.22(a) are read to refer to § 212.5 and § 212.56 respectively.

(6) § 212.26.

(b) In each place the term "LEA" appears in § 212.4, § 212.5(a), or § 212.26, the term is considered to mean "SEA."

(Authority: 20 U.S.C. 2743)

§ 212.58 May an SEA make a subgrant to an LEA or other operating agency?

Notwithstanding the prohibition of subgrants in 34 CFR 75.708(a), an SEA that receives a grant under the Migrant Education Even Start program may make a subgrant of funds to one or more LEAs or other operating agencies provided that program funds are used as the SEA's approved project application specifies.

(Authority: 20 U.S.C. 2743, 2831)

[FR Doc. 89–12566 Filed 5–24–89; 8:45 am]
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federal register

Thursday
May 25, 1989

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Parts 61, 141, and 143
Pilot and Flight Instructor, Pilot School, and Ground Instructor Certification; Notice of Hearings; Job Task Analysis (JTA) Data Base and Users Guide; Notice of Availability; Proposed Rules

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 141, and 143

[Docket No. 25627]

Regulatory Review of FAR Parts 61, 141, and 143

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of hearings.

SUMMARY: This notice announces four public hearings in which the Federal Aviation Administration (FAA) will be soliciting information from the public concerning a revision of aircraft pilot and flight instructor, pilot school, and ground instructor certification rules. A complete explanation of the topics to be considered appears in this notice under Topics for Discussion. The FAA will use information and views learned at these hearings to review the existing regulations, to explore alternatives in revising these rules, and to utilize a recently conducted FAA Pilot and Flight Instructor Job Task Analysis (JTA) in this regulatory review.

DATES: The public hearings will be held on September 12 and 13, 1989, in Washington, DC; on September 19 and 20, 1989, in Chicago, Illinois; on October 3 and 4, 1989, in Los Angeles, California; and on October 16 and 17, 1989, in Lake Buena Vista, near Orlando, Florida.

ADDRESSES: The public hearings will be held at the following locations:

(1) September 12 and 13, 1989, from 9:00 a.m. to 3:00 p.m. at the Federal Aviation Administration Building, Third Floor Auditorium, 800 Independence Avenue, SW., Washington, DC 20591. Registration will begin at 8:00 a.m. each day of the hearing.

(2) September 19 and 20, 1989, in Chicago, Illinois, from 9 a.m. until 5 p.m. at O'Hare Expo Center, 9289 Bryn Mawr, Rosemont, Illinois 60018. Registration will begin at 8 a.m. each day of the hearing.

(3) October 3 and 4, 1989, in Los Angeles, California, from 9 a.m. until 5 p.m. at the Viscount Hotel, 9750 Airport Boulevard, Los Angeles, California 90045. Registration will begin at 8 a.m. each day of the hearing.

(4) October 16, 1989, from noon until 5:00 p.m. and October 17, 1989, from 9:00 a.m. until 5:00 p.m. at the Grosvner Resort, 1850 Hotel Plaza Boulevard, Lake Buena Vista, Florida 32830. Registration will begin at 11 a.m. on October 16, and at 8:00 a.m. on October 17, 1989.

FOR FURTHER INFORMATION CONTACT: Requests to be heard at a meeting and questions concerning the logistics of the meetings should be directed to Linda Williams, Office of Rulemaking, ARM-1, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9685.

For questions concerning the subject matter of the meetings, contact John Lynch, or Edna H. French—Manager, Project Development Branch (AFS-850), General Aviation and Commercial Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8150.

SUPPLEMENTARY INFORMATION:

Participation at a Hearing

Persons wishing to present a statement at a hearing are requested to direct the request and submit a copy of any written material to be presented orally during a hearing to the person listed in the section entitled "**FOR FURTHER INFORMATION CONTACT.**" A request to present a statement and a copy of written material to be presented orally during the first hearing must be received by the FAA on or before September 1, 1989. A request to present a statement and a copy of written material to be presented orally during the second hearing must be received by the FAA on or before September 8, 1989. A request to present a statement and a copy of written material to be presented orally during the third hearing must be received by the FAA on or before September 22, 1989. A request to present a statement and a copy of written material to be presented orally during the fourth hearing must be received by the FAA on or before October 6, 1989. Each person requesting to present a statement and submitting written material should indicate which hearing they wish to attend and should include an estimate of the time necessary for the oral presentation. Following receipt of the presentation material, the FAA will develop an agenda for each hearing that will be available at that hearing. In order to accommodate as many speakers as possible, the amount of time allocated to each speaker may be less than the amount of time requested. Requests for time to make a presentation received after the above dates will be honored on a time-available basis and may not appear on the written agenda.

Persons or organizations unable to attend the meetings may mail their comments in duplicate to the Federal Aviation Administration, Office of the Chief Counsel, ATTN: Rules Docket (AGC-10), Docket No. 25627, 800 Independence Avenue, SW, Washington, DC 20591, or deliver comments in duplicate to: FAA Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, DC 20591. Comments that are mailed or delivered must be marked "Docket No. 25627." Comments may be inspected at Room 916 between 8:30 a.m. and 5:00 p.m., Monday through Friday (excluding Federal holidays).

Background

This rulemaking project constitutes the second phase of the regulatory review to revise the aircraft pilot and flight instructor, pilot school, and ground instructor certification rules and will permit existing regulations to be further streamlined and reevaluated in terms of policy and safety considerations that have come to light since the last major regulatory review. The first phase of the regulatory review focused on immediate concerns, National Transportation Safety Board (NTSB) recommendations, past petitions for rulemaking, and requests for exemption received from the public.

In 1962, Part 20 of the Civil Air Regulations (CAR), Pilot and Instructor Certificates, was recodified as Part 61, Certification: Pilots and Flight Instructors, of the Federal Aviation Regulations (27 FR 7955; August 10, 1962). The last major revision of Part 61 was completed in 1973 (38 FR 3161; February 1, 1973).

Airman Agency Certificates, CAR Part 50, was recodified as FAR Part 141, Pilot Schools (27 FR 6656; July 13, 1962). The last major revision to Part 141 was completed in 1974 (39 FR 20152; June 6, 1974); since then, Part 141 has been amended only once (47 FR 46066, October 14, 1982).

The rules pertaining to ground instructors, CAR Part 51, became FAR Part 143 (27 FR 6661; July 13, 1962). Four amendments have been made to Part 143; the last of these was adopted in 1971 (36 FR 2865; February 11, 1971).

Since the revision in 1973, 21 amendments to Part 61 have been made to meet the needs of the user population in an increasingly complex and demanding environment.

Public requests in the form of letters and petitions for exemption and rulemaking, together with technological advances in aircraft, training equipment, and air traffic control procedures, have made it necessary for the FAA to consider a major regulatory review of FAR Parts 61, 141, and 143. The FAA's approach on this rulemaking project will incorporate a multifaceted consolidation of separate rulemaking projects, thus

permitting a coordinated effort in addressing the immediate and long-term needs of the public and of the aviation industry at all levels. Together, these rulemaking projects will significantly affect the future of pilot and instructor training and certification in the United States.

To facilitate this regulatory review, a Notice of Public Hearing was published in the Federal Register on June 27, 1988 (53 FR 24178), requesting participation from the public. In that Notice of Public Hearing document, the FAA announced the hearing schedule and several topics of discussion for public comment. The topics for discussion were identified on the basis of regulatory amendments previously adopted by the FAA, petitions for exemption, letters, petitions for rulemaking, National Transportation Safety Board (NTSB) safety recommendations, visits to aviation schools and colleges, a survey of FAA field and regional offices, and FAA evaluations of training and certification rules. In addition, the FAA announced in the document the availability of a management action plan for conducting a JTA in conjunction with this regulatory review. The public hearings were held on July 26 and 27, 1988, at the FAA Building in Washington, DC, and on August 3 and 4, 1988, at the FAA Aviation Safety Center in Oshkosh, Wisconsin.

The FAA issued a second notice on this regulatory review on August 5, 1988 (53 FR 29582). This notice extended the period for receipt of written comments to Docket No 25627 until September 9, 1988, for the topics of discussion items and solicited comments on the methodology of the management action plan announced in the Notice of Public Hearing [53 FR 24178; June 27, 1988].

The FAA issued a third notice on this regulatory review on December 5, 1988 (53 FR 49072). This notice extended the period for receipt of written comments to Docket No. 25627 until the FAA gives notice in the Federal Register that the document is closed.

The FAA has issued elsewhere in this issue of the Federal Register, a Notice of Availability of a Job Task Analysis. That notice concerns the availability of a Job Task Analysis data base and Users Guide which identifies the required knowledge, skills, abilities, and attitudes needed by pilots and instructors for flying in each category and class of aircraft in the various operating environments of today's National Airspace System. In addition, the notice announces the availability of a transcript from a panel of subject matter experts who addressed future training issues (a 3 to 10 year look ahead).

The FAA plans to issue a Notice of Proposed Rulemaking (NPRM) in the near future. This NPRM will address NTSB safety recommendations and items discussed at the public hearings in Washington, DC and Oshkosh, Wisconsin that were identified by the FAA as feasible for immediate action.

Docket No. 25627 will remain open to facilitate the orderly flow of collecting comments, recommendations, and ideas from the public throughout this regulatory review. However, with regard to the issues raised in this hearing notice, the FAA will consider all comments received in the docket on or before November 15, 1989, in development of an additional NPRM dealing with Parts 61, 141, and 143. Comments received after November 15 addressing the issues will be considered to the extent practicable. The development of this NPRM involves a major effort to determine and establish certification standards commensurate with long-range regulatory needs.

Topics for Discussion

The FAA requests the participation of all interested persons, and the identification of any data, literature, statistics, research papers, and/or other documentation that may be available in the public sector to support any recommendations. This will allow the FAA to thoroughly consider the issues herein and will provide a basis for any regulatory change. All comments will be considered in this and any future rulemaking action by the FAA regarding Parts 61, 141, and 143.

Participants in this public meeting are invited to express views and to make recommendations for regulatory changes. Participants should also address the economic consequences (e.g., implementation costs, potential savings) of the changes that they recommend. The FAA encourages those persons submitting comments to include sources of supporting data that may be applicable to their viewpoints and recommendations

The topics for discussion cover some of the same areas addressed in hearings held during an earlier stage of this regulatory review, and comments received previously that are pertinent to issues listed below remain under active consideration. Although the FAA has considerable data on many of the issues and questions listed below, the following items are presented to elicit information and comment from, and to stimulate informed discussion among interested persons and organizations:

1. Structure and content of the various pilot and flight instructor certificates and ratings.

a. Should changes be made in the content of the aeronautical knowledge and flight experience requirements for the various pilot and flight instructor certificates and ratings?

b. What are the advantages and disadvantages of consolidating pilot and instructor training regulations, which are currently covered in FAR Parts 61, 141, and 143, into one regulation and requiring all schools, organizations, and individuals involved with conducting pilot and instructor training to use school generated, FAA-approved course outlines that meet FAA prescribed standards? What would be the impact of using standardized curricula provided in advisory circular format in lieu of school generated curricula? If Part 141 is eliminated, what portions of it are desirable to retain in a consolidated training regulation? What would be the impact of such a consolidation on safety? What would be the economic consequences if such a consolidation were effected? What data are available to compare the safety records of pilots trained under Parts 61 and 141?

2. Requirements for written tests, practical tests, and proficiency checks.

a. Does available information indicate that changes are warranted in the written and practical test and proficiency check procedures?

b. What changes should be considered in procedures for proficiency checks for aircraft requiring more than one pilot?

c. Should the specific tasks or requirements of the Practical Test Standards be incorporated in some form into FAR Part 61?

3. Basic requirements for certificates and ratings.

a. Based on available information, what changes should be made regarding basic eligibility requirements and prerequisite criteria for the various pilot and instructor certificates and ratings?

b. What changes should be considered in Part 61 regarding when and what grade medical certificates must be held by airmen?

4. Areas to strengthen training requirements.

a. Is there a need, based on available information for specific changes to better match the pilot training regimen with the demands of operating in the National Airspace System?

b. What are the relative advantages and disadvantages of two training concepts, "training to a standard" and

"minimum experience requirements"? Should the current concept (minimum experience requirements plus whatever training is needed for an applicant to accomplish satisfactory proficiency standards) be eliminated or modified, and should additional emphasis be placed on minimum standards such as those set in the Practical Test Standards?

c. The Administrator's Interagency Near Midair Collision Working Group has recommended that FAR Part 61 training elements be reviewed with a view toward incorporating scanning techniques in all initial training. What is the best method of amending the regulations to emphasize this issue and to specify that training include scanning techniques?

d. Should training requirements include pilot training in the purpose, operation, and requirements for use of specific types of equipment such as transponders, ground proximity warning systems, Electronic Flight Instrument Systems (EFIS), weather radar, and others?

5. Instructor duties and qualifications.

a. Are changes needed to clarify flight and ground instructor privileges, limitations, and responsibilities?

b. Under current regulations, flight instructors may renew their certificates by taking recurrent training in the form of a refresher course of 24 hours of ground or flight instruction, or both. Another method for certificate renewal is based on the flight instructor's satisfactory record of instruction, without any required refresher training. However, aircraft and avionics systems are undergoing rapid technological change, as are airspace procedures and requirements and air traffic control systems. There is also concern within segments of the aviation community and within the FAA that recurrent training may need to be expanded for all active flight instructors. For example, the Traffic Alert and Collision Avoidance System (TCAS), which is being phased into use aboard large transport airplanes and certain smaller turbine powered airplanes, will profoundly affect the flight environment over the next few years. TCAS eventually will be available for general aviation airplanes. TCAS thus will join a growing list of sophisticated equipment and systems, such as LORAN-C navigation systems, weather radar, and other devices that are increasingly appearing aboard general aviation aircraft or are otherwise affecting the flight environment. Based on these considerations and available data, what measures can be taken to upgrade recurrent training of flight instructors, in order to permit flight instructors to keep pace with the continuous advances occurring in the technology in aircraft, avionics, and airspace management? Should refresher training courses be made mandatory for all flight instructors on a periodic basis such as every two years? Should such courses include ground or flight training, or both?

c. Should instructor limitations on hours of instruction include limiting the number of hours of instruction given in simulators and/or ground trainers as well as instruction given in flight?

6. Defining key concepts and terms.

a. How should basic FAR terms and definitions be updated, clarified, or standardized? For example, such terms may include "complex" and "high performance airplane," "practical test," "preflight planning/action," and others.

b. What clarification is needed in the requirement that pilots maintain personal possession of their certificates while acting as pilot in command?

c. What changes should be considered in the criteria for logging of flight time?

7. English language requirements.

a. Are changes needed in English language requirements for pilot certificates and ratings, in order to better insure that all pilots are able to adequately handle radio communications demands and function safely in the air traffic environment?

8. Part 141 pilot schools training requirements.

a. What are possible alternative procedures for monitoring quality of instruction by Part 141 approved pilot training schools?

b. Is there a need for modifications in the FAR regarding approved pilot schools' examining authority?

c. Should the FAA consider changes in relation to administrative aspects of Part 141 schools, including Training Course Outline (TCO) procedures?

9. Instructors.

a. What changes or clarifications should be considered with regard to the delegation of authority to conduct required checks at Part 141 schools?

10. Part 143, ground instructors.

a. What is the best method of amending the FAR in order to clarify privileges, responsibilities, and limitations associated with the ground instructor certificate under Part 143? What are the advantages and disadvantages of incorporating these requirements into the flight instructor subpart of Part 61?

b. If Parts 61, 141, and 143 are consolidated into a single FAR, should the ground instructor certificate be retained?

c. What aeronautical knowledge and flight proficiency requirements are necessary to ensure that ground instructors are properly qualified to teach in the various levels of training devices?

11. Training needs identified by the futures' panel who participated in the Job Task Analysis

a. Should new training and endorsement requirements be imposed for pilots conducting unique kinds of operations, such as low altitude operations such as pipe line patrol; emergency medical operations; high traffic density areas such as terminal control areas; operations conducted in special use airspace such as the oceanic air routes across the Atlantic Ocean; and international flight, etc.

b. Should cockpit resource management, judgment, and other human factors training be required? If so, at what pilot certificate level should this training be required?

c. Should aeronautical knowledge and flight proficiency training requirements be based on the type of aircraft being flown and the operation being conducted rather than level of pilot certificate level? For example, an applicant who elects to enroll in a training course for a private pilot certificate utilizing a complex or high performance airplane as opposed to the more basis, primary airplane.

d. Should the rules be modified to require specialized training and/or an instructor endorsement for operating a certain make and model of navigational and communication equipment for which the pilot is not familiar? For example, if the pilot flies an aircraft equipped with LORAN-C, weather radar, or other makes and models of avionic equipment, should the pilot have specialized training on the equipment.

12. Additional

Participants in these public meetings are invited to express any additional views and recommendations for changes to Parts 61, 141, and 143.

Hearing Procedures

The following procedures are established to facilitate the hearings:

1. There will be no admission fee or other charge to attend and participate in the hearings. The hearings will be open, on a space-available basis, to all persons who register. If practicable, the hearings may be accelerated to enable

adjourment in less than the scheduled time.

2. The hearing will be chaired by the FAA. A panel of FAA personnel involved in this rulemaking project will be present.

3. All sessions will be recorded by a court reporter. Anyone who is interested in purchasing a copy of the transcript of the proceedings should contact the court reporter directly. A copy of the transcript and any material accepted by the hearing panel will be placed in the docket.

4. The FAA will consider all material presented by participants at the hearings and all comments will be forwarded to the public docket. Position papers or handout material concerning the topics may be accepted at the discretion of the chairperson of each hearing. However, enough copies must be provided for distribution to the hearing panel and to other participants at that hearing.

5. Statements by FAA personnel at the meetings will be made to facilitate discussion, but should not be considered as expressing FAA positions.

Issued in Washington, DC, on May 19, 1989.

Robert L. Goodrich,

Director, Flight Standards Service.

[FR Doc. 89-12500 Filed 5-24-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 61, 141, and 143

[Docket No. 25627]

Regulatory Review of FAR Parts 61, 141, and 143

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of Job Task Analysis (JTA).

SUMMARY: This notice announces the availability of a Job Task Analysis (JTA) data base and Users Guide which identifies the required knowledge, skills, abilities, and attitudes needed by pilots and instructors for flying in each category and class of aircraft in the various operating environments of today's National Airspace System. The FAA will use the data regarding the knowledge, skills, abilities, and attitudes collected in the JTA during its ongoing regulatory review of the pilot, instructor, and school certification rules. Additionally, a transcript from a panel addressing future training issues (a 3 to 10 year look ahead) is available for review in the docket.

ADDRESSES: The completed JTA data base and User's Guide may be obtained through the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, (703) 487-4650. The JTA is being made available to the public in the form of a single 5¼-inch, 1.2 MB floppy diskette and a User's Guide of approximately 15 pages. The order number for the diskette and User's Guide is PB89167845. Currently, the cost of obtaining the diskette and User's Guide is approximately $50.

The paper copy of the JTA and the transcript of the futures panel may be examined in Docket No. 25627 at the Federal Aviation Administration, Room 915G, 800 Independence Avenue, SW., Washington, DC 20591, between 8:30 a.m. and 5 p.m., Mondays through Fridays (excluding Federal holidays).

FOR FURTHER INFORMATION CONTACT: For technical questions concerning the subject matter of the JTA, contact John Lynch, or Edna H. French—Manager, Project Development Branch (AFS-850), General Aviation and Commercial Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8150.

SUPPLEMENTARY INFORMATION:

Availability of this Notice

Any person may obtain a copy of this notice by submitting a request to the FAA, Office of Public Affairs, ATTN: APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling the Office of Public Affairs at (202) 267-3484. Communications must identify the docket number of this notice. Persons interested in being placed on a mailing list for future notices should request a copy of Advisory Circular 11-2, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Comments Invited

The FAA wishes to receive comments from the public on the results and the conduct of the JTA. Interested persons may comment on the JTA during the upcoming public hearings which are announced elsewhere in this **Federal Register**. In addition, comments may be sent to the Federal Aviation Administration, Office of the Chief Counsel, ATTN: Rules Docket (AGC-204), Docket No. 25627, 800 Independence Ave. SW., Washington, DC 20591 or delivered to the FAA Rules Docket, Room 915G, 800 Independence Avenue SW., Washington, DC 20591. All comments should be submitted to the FAA in duplicate.

Background

The objective of the JTA is to support FAA decision-making concerning the following subjects:

1. Evaluating Parts 61, 141, and 143 and changing the rules, if appropriate;

2. Defining written and performance testing requirements for all certificates and ratings; and

3. Providing guidance to the aviation industry in developing pilot and instructor training programs.

The JTA is in the form of a single 5¼-inch, 1.2 MB floppy diskette and a User's Guide of approximately 15 pages. In order to use the diskette, the computer equipment must possess the following capabilities:

- An IBM AT or equivalent compatible computer equipment with 80286 coprocessor and 10MHz clock speed minimum capacity;
- 640K RAM capacity;
- 20 MB hard disk and one 1.2 MB 5¼-inch floppy disk drive;
- DOS 3.2;
- Ashton-Tate's dBASE III+ Version 1.1;
- Monochrome or color monitor; and
- Near letter quality dot matrix or laser printer.

The JTA report describes information and input from subject matter experts (i.e., experienced and current pilots, flight and ground instructors, and examiners from the aviation community). It identifies the required knowledge, skills, abilities, and attitudes needed by pilots and instructors for flying in each category and class of aircraft in the various operating environments to today's National Airspace System.

The data contained within the FAA pilot/flight instructor JTA data base is a compilation of information collected from industry subject matter experts during a series of workshops dealing with the following subjects: single engine airplane, multiengine airplane, turbojet airplane, amphibious, helicopter, gyroplane, ultralight, glider, balloon, and airship.

The methodology used in each workshop was standardized and supported the collection of validated information. The results of each workshop include the statistical analysis of the data collected from each subject matter expert. As such, no one set of data carries greater weight than any other set of data. Therefore, it is possible that not all industry experts will completely agree with the data in the data base.

The FAA wishes to emphasize that the JTA data base contained on the

diskette is neither copyrighted nor copy protected. This information is considered to be in the public domain and the FAA desires that it receive the widest possible dissemination.

In addition to the subject matter expert panels, the FAA obtained information from a 3-day panel discussion of issues related to the future (3–10 year look ahead) training and certification requirements for pilots and flight instructors. The information collected from this panel is not included in the JTA data base. The issues discussed include:

1. Technology and automatior advancements
2. New aircraft designs
3. Man-machine interface
4. Role of the pilot in aircraft of the future
5. Eliminating pilot error
6. Pilot physiology factors
7. Pilot training
8. Improvements in weather forecasting.

A paper copy of the JTA methodology and data and a transcript of the futures panel have been placed in Docket No. 25627. The material consists of the following:

- Pilot/Flight Instructor Job/Task Analysis Final Report (43 pages)
- Task Inventories, Appendix A (approximately 270 pages)
- Task Inventories, Appendix B (approximately 270 pages)
- Administrative Manuals, Appendix C (43 pages)
- Pilot Forms, Appendix D (approximately 190 pages)
- Pilot Forms, Appendix E (approximately 210 pages)
- Flight Instructor Forms, Appendix F (approximately 85 pages)
- Data Base Reports, Appendix G (267 pages) and Appendix H (230 pages)
- Correspondence, Appendix I (32 pages)
- Future Contacts, Appendix J (21 pages)
- Future Transcript—Appendix K, Part 1 (267 pages) and Part 2 (172 pages).

Issued in Washington, DC, on May 18, 1989.

Robert L. Goodrich,

Director, Flight Standard Service.

[FR Doc. 89–12499 Filed 5–24–89; 8:45 am]

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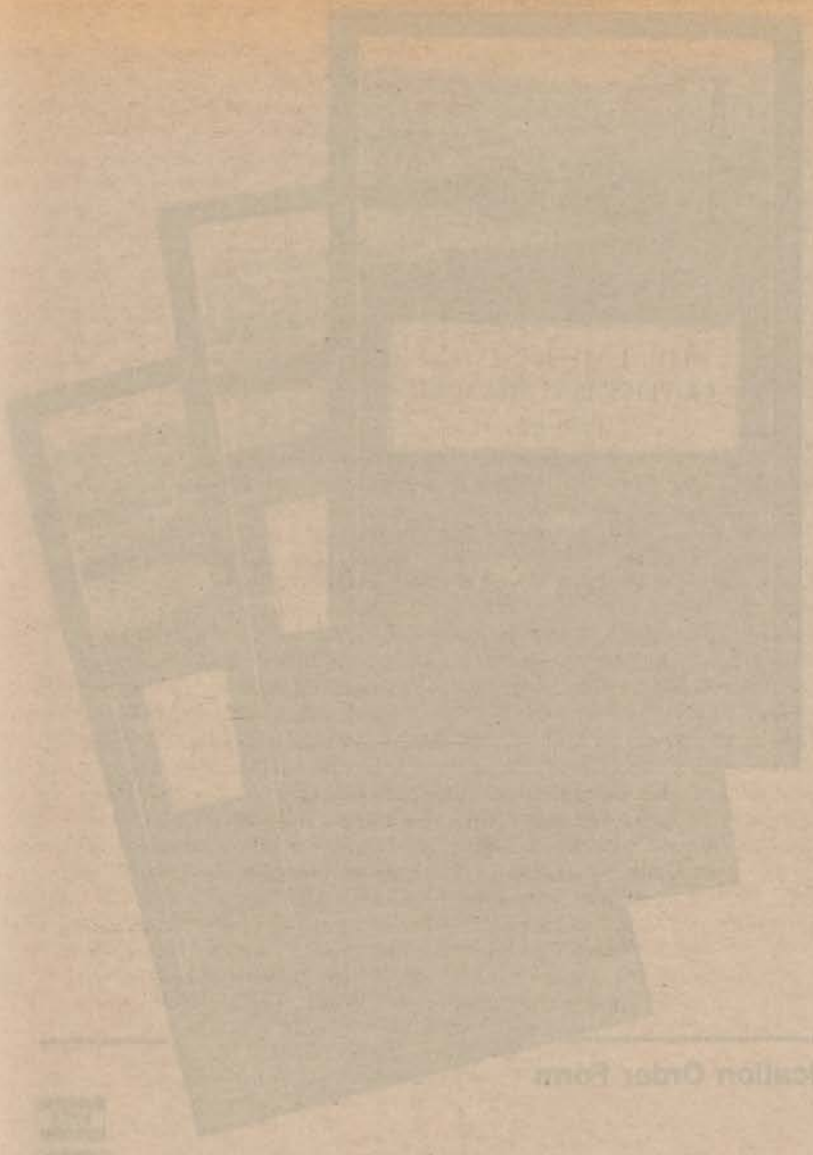
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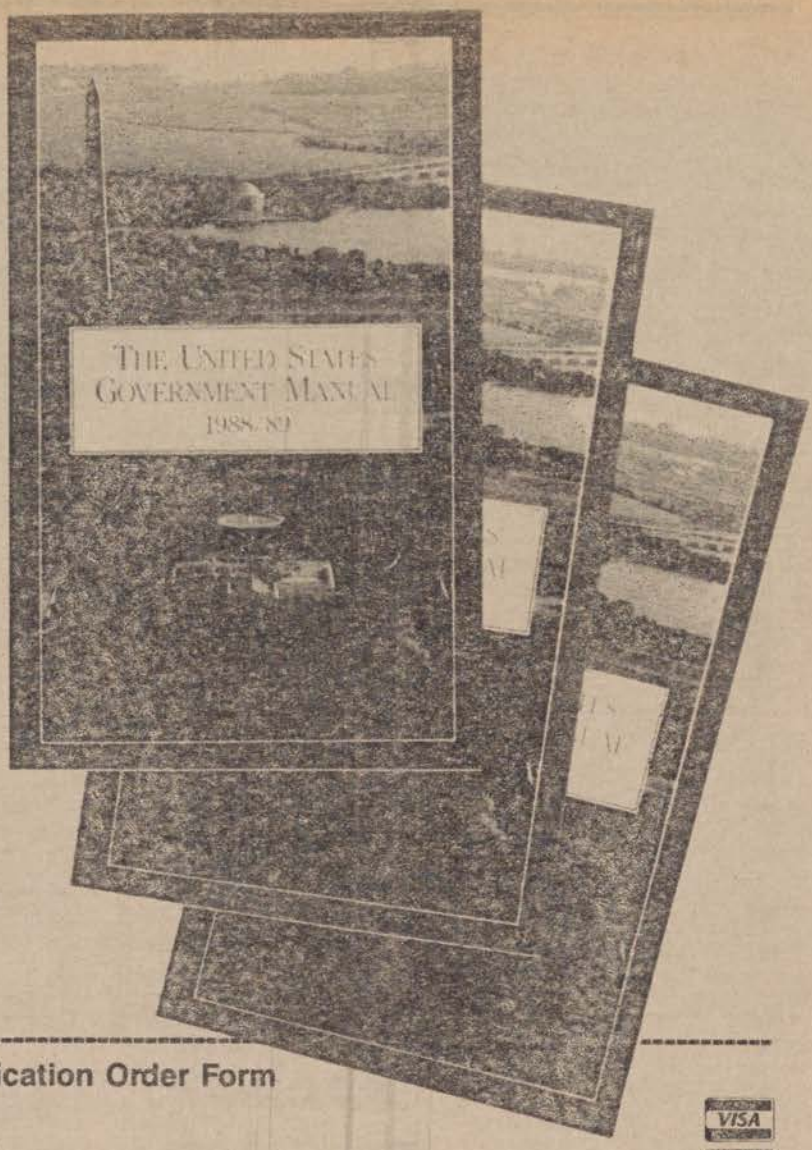
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